

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

PREAMBLE

1. **Sections Affected**

	<u>Rulemaking Action</u>
R3-4-613	Amend
R3-4-614	Amend
R3-4-616	Amend
Appendix A	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. § 3-912

Implementing statute: A.R.S. §§ 3-903 and 3-913
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Shirley Conard, Rules Specialist
Address:	Department of Agriculture 1688 West Adams, Room 124 Phoenix, Arizona 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
4. **An explanation of the rule, including the agency's reason for initiating the rule:**

R3-4-613. Native Plant Permit Fees; Exemptions

No substantive information has been added to, or deleted from, this rule. The editing permits the Department to maintain a standard rule structure.

R3-4-614. Native Plant Tag and Receipt Fees

No substantive information has been added to, or deleted from, this rule. The editing permits the Department to maintain a standard rule structure.

R3-4-616. Use of Metal Seals

This rule deals with regulating the movement of protected native plant species. The Department has been consistently losing money by providing metal seals, free, to people moving protected native plants, particularly species obtained outside the state. Consequently, because the Department has too few inspectors and not enough money to purchase large supplies of blue metal seals, this portion of the program has become too monumental to continue. The Department considered removing the requirement for tagging out-of-state protected native plants. However, preliminary industry comments suggest that this removal may promote cactus thievery and be detrimental to Arizona cactus merchants. Furthermore, it would be difficult to prove that the permit had not been used previously.

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Appendix A

Over the last few years, it has been apparent that the Agavaceae, Cactaceae, Liliaceae, and Orchidaceae families, currently listed as salvage-restricted protected native plants, were not complete. These families, however, are so large that it is impossible to list each specie and plant within these categories. To remedy this problem, the initial statement preceding the salvage-restricted listing protects all other species in these families. The specific changes in the List of Protected Native Plants by Categories was recommended by the Native Plant Technical Advisory Board at their 1995/1996 meeting.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture*

Because of limited funding and personnel, the Department has been unable to enforce the blue seal requirement for native plants obtained outside of this state. Neither the Department nor the state of Arizona receives any benefit or revenue from the current blue metal seal requirements. Since funding does not exist to provide additional inspectors or monies to supply blue seals for these plants, the Department has been unable to regulate protected native plants entering the state. An application for a Blue Seal Movement Permit is only \$5; however, with this application comes a request for a specific number of blue seals. If 500 blue seals are requested (\$0.06 per blue seal = \$30), the cost is \$30 for this transaction. In the past, the Department was supplying 2,000 blue seals per month. (24,000 seals = \$1440 per year). To re-establish this program and fairly handle the cost of metal seals, this rulemaking targets only those people using the program, whether out-of-state users or in-state users, and removes the financial burden from the Department. The Department will be reimbursed for the cost of supplying metal seals to program users.

B. *Estimated Costs and Benefits to Political Subdivisions*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected by the Rulemaking*

Businesses moving protected native plants will be affected by the metal seal cost. In the past, this cost has been absorbed by the Department. Since this is no longer possible and it is essential to maintain the integrity of the protected native plant program, the cost is being transferred to those people using the program. Currently each seal is \$0.06 and will be available at this cost from the Department.

D. *Estimated Costs and Benefits to Private and Public Employment*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public*

Consumers and the public will also be affected by the metal seal cost. As in the case of business, the cost is being transferred to those persons using the program. Currently each seal is \$0.06 and will be available at this cost from the Department.

F. *Estimated Costs and Benefits to State Revenues*

This rulemaking will have a small impact on state revenues. A.R.S. § 3-913(C), entitled "Fiscal provisions; fees; Arizona protected native plant fund", provides that 10% of [a]ll fees, civil penalties and other monies collected under this chapter shall be transferred to the state treasurer for credit to the fund. If the tags are requested at the previous rate of 2,000 per month, this would result in an addition \$144 to the state general fund.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement is:**

Name: Shirley Conard, Rules Specialist
Address: Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: May 19, 1997
Time: 10:00 a.m.
Location: Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007

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Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 2:00 p.m., May 19, 1997. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.
10. Incorporations by reference and their location in the rules:
None.
11. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

ARTICLE 6. ARIZONA NATIVE PLANTS

Section

- R3-4-613. Native Plant Permit Fees; Exemptions
R3-4-614. Native Plant Tag and Receipt Fees
R3-4-616. Use of Metal Seals, Blue Seal Movement Permit
Appendix A Protected Group of Native Plants - Covered

ARTICLE 6. ARIZONA NATIVE PLANTS

3-4-613. Native Plant Permit Fees; Exemptions

- A. Pursuant to A.R.S. § 3-913, the following nonrefundable fees are established shall be submitted to the Department for protected native plant permits:
1. Salvage-assessed native plants, annual use; \$25.00.
 2. Harvest-restricted native plants, annual use; \$25.00.
 3. All other native plants, one-time use; \$5.00.
- B. Permit fees are nonrefundable and shall be paid to the Department at the time the permit is obtained.
- ~~C.B.~~ Personal use of plants by landowners or plants relocated to a scientific and educational collection shall be exempt from permit fees provided that:
1. The plants intended for personal use by the landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain the property of the landowner, and are not sold or offered for sale; or
 2. The plants are intended for scientific and educational purposes and are relocated to a scientific and educational collection.

R3-4-614. Native Plant Tag and Receipt Fees

- A. Pursuant to A.R.S. § 3-913, the following nonrefundable fees, except for subsection (A)(5), are established for protected native plant tags shall be submitted to the Department at the time the tag is obtained:
1. Saguaro; \$5.00 per plant.
 2. Trees cut for firewood and listed in the harvest restricted category; \$3.00 per cord of firewood.
 3. Coryphantha, mammillaria, and pincushion cactus; \$.50 per plant.
 4. All other protected native plants, as referenced in A.R.S. § 3-903(B) and listed in Appendix A; \$3.00 per plant.
 5. Harvested parts of *nolina* and *yucca*; \$3.00 per ton, no later than the 10th day of each month following harvest.
- B. Tag fees are non-refundable and shall be paid to the Department at the time the tag is obtained.
- ~~C.~~ Receipt fees are non-refundable and shall be paid to the Department no later than the tenth day of each month following harvest.

Harvested parts of *nolina* and *yucca*; \$3.00 per ton.

- ~~D.B.~~ Landowners obtaining a permit for the personal use of plants shall not be required to obtain are exempt from obtaining native plant tags.

R3-4-616. Use of Metal Seals, Blue Seal Movement Permit

- A. Blue metal seals, which have a one-time use, shall be attached to identify protected native plant species which:
1. Have previously been transplanted from their original growing sites and are to be transplanted to another location; or
 2. Were obtained outside the state of Arizona and are to be transported and planted within the state.
- B. The Department shall issue a Blue Seal Movement Permit to any person requesting blue metal seals set forth in paragraph (A)(1). The permit shall include:
1. The shipper, carrier, and receiver of the protected native plant species;
 2. The type and number of plants being removed and transported; and
 3. The permit expiration date.
- ~~C.~~ The Department shall issue an Inspection Record to any person requesting blue metal seals as set forth in paragraph (A)(2). The record shall include:
1. The shipper and receiver of the protected native plant species, and
 2. The type and number of the protected native plants species imported.
- ~~D.~~ White metal seals, which have a one-time use, shall be attached prior to the time of taking or removing such plants from their original growing sites to identify protected native plants, other than saguaro cacti.
- ~~E.~~ Red metal seals, which have a one-time use, shall be attached to identify protected saguaro cacti prior to the time of taking or removing such plants from their original growing sites.
- A. Any person wishing to move protected native plants shall obtain, at cost, metal seals from the Department.
1. Blue metal seals have a 1-time use and shall be securely attached to identify each protected native plant identified in subsection (B).
 2. White metal seals have a 1-time use and shall be securely attached prior to taking or removing the plants from their original growing sites to identify protected native plants, other than saguaro cacti.
 3. Red metal seals have a 1-time use and shall be securely attached to identify protected saguaro cacti before taking or removing the plants from their original growing sites.
- B. Any person wishing to move a protected native plant specie that has previously been transplanted from its original growing

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site and will be transplanted to another location, or was obtained outside of Arizona and will be transported and planted within the state, shall apply for a Blue Seal Movement Permit. The permit shall contain:

1. The name of the shipper, carrier, and receiver of the protected native plant species;
2. The type and number of protected native plants being removed, transported, or imported; and
3. The permit expiration date.

Appendix A. Protected Group of Native Plants - Covered

List of Protected Native Plants by Categories

A. Highly Safeguarded Protected Native Plants

The following list includes those species of native plants and parts of plants, including the seeds and fruit, whose prospects for survival are in jeopardy or which are in danger of extinction.

1. AGAVACEAE Agave Family
 - a. *Agave arizonica* Gentry & Weber--Arizona agave
 - b. *Agave delamateri* Eckers & Hodgson--ined. & Slau-son
 - c. *Agave murpheyi* Gibson--Hohokam agave
 - d. *Agave parviflora* Torr.--Santa Cruz striped agave, Small-flowered agave
 - e. *Agave schottii* Engelm. var. *treleasei* (Toumey) Kearney & Peebles
2. APIACEAE Parsley Family. [= Umbelliferae]

Lilaeopsis schaffneriana (Schlecht.) Coult. & Rose ssp. *recurva* (A. W. Hill) Affolter--Cienega false rush, Huachuca water umbel.

Syn.: *Lilaeopsis recurva* A. W. Hill
3. APOCYNACEAE Dogbane Family
 - a. *Amsonia kearneyana* Woods.--Kearney's bluestar
 - b. *Cycladenia humilis* Benth. var. *jonesii* (Eastw.) Welsh & Atwood--Jones's cycladenia
4. ASCLEPIADACEAE Milkweed Family

Asclepias welshii N. & P. Holmgren--Welsh's milkweed
5. ASTERACEAE Sunflower Family [= Compositae]
 - a. *Erigeron lemmonii* Gray--Lemmon fleabane
 - b. *Senecio franciscanus* Greene--San Francisco Peaks groundsel
 - c. *Senecio huachucanus* Gray--Huachuca groundsel
6. BURSERACEAE Torch Wood Family

Bursera fagaroides (H.B.K.) Engler--Fragrant burs-
era
7. CACTACEAE Cactus Family
 - a. *Carnegiea gigantea* (Engelm.) Britt. & Rose--Saguaro: 'Crested' or 'Fan-top' form only
 - Syn.: *Cereus giganteus* Engelm.
 - b. *Coryphantha recurvata* (Engelm.) Britt. & Rose--Golden-chested beehive cactus
 - Syn.: *Mammillaria recurvata* Engelm.
 - c. *Coryphantha robbinsorum* (W. H. Earle) A. Zimmerman--Cochise pincushion cactus, Robbin's cory cactus.
 - Syn.: *Cochiseia robbinsorum* W.H. Earle
 - d. *Coryphantha scheeri* (Kuntze) L. Benson var. *robustispina* (Schott) L. Benson--Scheer's strong-spined cory cactus.
 - Syn.: *Mammillaria robustispina* Schott
 - e. *Echinocactus horizontalis* Lemaire var. *nicholii* L. Benson--Nichol's Turk's head cactus
 - f. *Echinocereus triglochidiatus* Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson--Arizona hedgehog cactus

- g. *Echinomastus erectocentrus* (Coult.) Britt. & Rose var. *acunensis* (W.T.Marshall) L.Benson--Acuaa cactus

Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *acunensis* (W. T. Marshall) L. Benson

- h. *Pediocactus bradyi* L. Benson--Brady's pincushion cactus
- i. *Pediocactus paradinei* B. W. Benson--Paradine plains cactus
- j. *Pediocactus peeblesianus* (Croizat) L. Benson var. *fickeiseniae* L. Benson
- k. *Pediocactus peeblesianus* (Croizat) L. Benson var. *peeblesianus* Peebles' Navajo cactus, Navajo plains cactus

Syn.: *Navajoa peeblesiana* Croizat

- l. *Pediocactus sileri* (Engelm.) L. Benson--Siler pincushion cactus

Syn.: *Utahia sileri* (Engelm.) Britt. & Rose

COCHLOSPERMACEAE Cochlospermum Family

Amoreuxia gonzalezii Sprague & Riley

8. CYPERACEAE Sedge Family

Carex specuicola J. T. Howell--Navajo sedge

9. FABACEAE Pea Family [=Leguminosae]

- a. *Astragalus cremnophylax* Barneby var. *cremnophylax* Sentry milk vetch

- b. *Astragalus holmgreniorum* Barneby--Holmgren milk-vetch

- c. *Dalea tentaculoides* Gentry--Gentry indigo bush

10. LENNOACEAE Lennoa Family

- a. *Pholisma arenarium* Nutt.--Scaly-stemmed sand plant

- b. *Pholisma sonora* (Torr. ex Gray) Yatskievych--Sandfood, sandroot

Syn.: *Ammobroma sonora* Torr. ex Gray

11. LILIACEAE Lily Family

Allium gooddingii Ownbey--Goodding's onion

12. ORCHIDACEAE Orchid Family

- a. *Cypripedium calceolus* L. var. *pubescens* (Willd.) Correll--Yellow lady's slipper

- b. *Hexalectris warnockii* Ames & Correll--Texas purple spike

- c. *Spiranthes delitescens* C. Sheviak

13. POACEAE Grass Family [=Gramineae]

Puccinellia parishii A.S. Hitchc.--Parish alkali grass

14. POLYGONACEAE Buckwheat Family

Rumex orthoneurus Rech. f.

15. PSILLOTACEAE Psilotum Family

Psilotum nudum (L.) Beauv. Bush Moss, Whisk Fern

16. RANUNCULACEAE Buttercup Family

- a. *Cimicifuga arizonica* Wats.--Arizona bugbane

- b. *Clematis hirsutissima* Pursh var. *arizonica* (Heller) Erickson--Arizona leatherflower.

17. ROSACEAE Rose Family

Purshia subintegra (Kearney) J. Hendrickson--Arizona cliffrose, Burro Creek cliffrose

Syn.: *Cowania subintegra* Kearney

18. SALICACEAE Willow Family

Salix arizonica Dorn--Arizona willow

19. SCROPHULARIACEAE Figwort Family

Penstemon discolor Keck--Variegated beardtongue

B. Salvage-restricted Protected Native Plants

The following list includes those native plants which are not included in the highly safeguarded category but are subject to damage by theft or vandalism. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all

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other species in these families are salvage-restricted protected native plants.

1. AGAVACEAE Agave Family
 - a. *Agave chrysantha* Peebles
 - b. *Agave deserti* Engelm. ssp. *simplex* Gentry--Desert agave
 - c. *Agave mckelveyana* Gentry
 - d. *Agave palmeri* Engelm.
 - e. *Agave parryi* Engelm. var. *couseii* (Engelm. ex Trel.) Kearney & Peebles
 - f. *Agave parryi* Engelm. var. *huachuensis* (Baker) Little ex L. Benson
 Syn.: *Agave huachuensis* Baker
 - g. *Agave parryi* Engelm. var. *parryi*
Agave schottii Engelm. var. *schottii* - Shindigger
 - h. *Agave toumeyana* Trel. ssp. *bella* (Breitung) Gentry
 - i. *Agave toumeyana* Trel. ssp. *toumeyana*
 - j. *Agave utahensis* Engelm. ssp. *kaibabensis* (McKelvey) Gentry
 Syn.: *Agave kaibabensis* McKelvey
 - k. *Agave utahensis* Engelm. var. *utahensis*
 - l. *Dasyliroton wheeleri* Wats.--Sotol, desert spoon
 - m. *Nolina bigelovii* (Torr.) Wats.--Bigelow's nolina
 - n. *Nolina microcarpa* Wats.--Beargrass, sacahuista
 - o. *Nolina parryi* Wats.--Parry's nolina
 - p. *Nolina texana* Wats. var. *compacta* (Trel.) Johnst.--Bunchgrass
 - q. *Yucca angustissima* Engelm. var. *angustissima*
 - r. *Yucca angustissima* Engelm. var. *kanabensis* (McKelvey) Reveal
 Syn.: *Yucca kanabensis* McKelvey
 - s. *Yucca arizonica* McKelvey
 - t. *Yucca baccata* Torr. var. *baccata*--Banana yucca
 - u. *Yucca baccata* Torr. var. *vespertina* McKelvey
 - v. *Yucca baileyi* Woot. & Standl. var. *intermedia* (McKelvey) Reveal
 Syn.: *Yucca navajoa* Webber
 - w. *Yucca brevifolia* Engelm. var. *brevifolia*--Joshua tree
 - x. *Yucca brevifolia* Engelm. var. *jaegeriana* McKelvey
 - y. *Yucca elata* Engelm. var. *elata*--Soaptree yucca, palmilla
 - z. *Yucca elata* Engelm. var. *utahensis* (McKelvey) Reveal
 Syn.: *Yucca utahensis* McKelvey
 - aa. *Yucca elata* Engelm. var. *verdiensis* (McKelvey) Reveal
 Syn.: *Yucca verdiensis* McKelvey
 - bb. *Yucca harrimaniae* Trel.
 - cc. *Yucca schidigera* Roetzl.--Mohave yucca, Spanish dagger
 - dd. *Yucca schottii* Engelm.--Hairy yucca
 - ee. *Yucca thornberi* McKelvey
 - ff. *Yucca whipplei* Torr. var. *whipplei*--Our Lord's candle
 Syn.: *Yucca newberryi* McKelvey
2. AMARYLLIDACEAE Amaryllis Family

Zephyranthes longifolia Hemsl.--Plains Rain Lily
3. ANACARDIACEAE Sumac Family

Rhus kearneyi Barkley--Kearney Sumac
4. ARECACEAE Palm Family [=Palmae]

Washingtonia filifera (Linden ex Andre) H. Wendl--California fan palm
5. ASTERACEAE Sunflower Family [=Compositae]
 - a. *Cirsium parryi* (Gray) Petrak ssp. *mogollonicum* Schaak

- b. *Cirsium virginensis* Welsh--Virgin thistle
- c. *Erigeron kuschei* Eastw.--Chiricahua fleabane
- d. *Erigeron piscaticus* Nesom--Fish Creek fleabane
- e. *Flaveria macdougalii* Theroux, Pinkava & Keil
- f. *Perityle ajoensis* Todson--Ajo rock daisy
- g. *Perityle cochisensis* (Niles) Powell-- Chiricahua rock daisy
- h. *Senecio quaerens* Greene--Gila groundsel
6. BURSERACEAE Torch-Wood Family

Bursera microphylla Gray--Elephant tree, torote
7. CACTACEAE Cactus Family
 - a. *Carnegiea gigantea* (Engelm.) Britt. & Rose--Saguaro
 Syn.: *Cereus giganteus* Engelm.
 - b. *Coryphantha missouriensis* (Sweet) Britt. & Rose
 - c. *Coryphantha missouriensis* (Sweet) Britt. & Rose var. *marstonii* (Clover) L. Benson
 - d. *Coryphantha scheeri* (Kuntze) L. Benson var. *valida* (Engelm.) L. Benson
 - e. *Coryphantha strobiliformis* (Poselger) var. *orcuttii* (Rose) L. Benson
 - f. *Coryphantha strobiliformis* (Poselger) var. *strobiliformis*
 - g. *Coryphantha vivipara* (Nutt.) Britt. & Rose var. *alversonii* (Coul.) L. Benson
 - h. *Coryphantha vivipara* (Nutt.) Britt. & Rose var. *arizonica* (Engelm.) W. T. Marshall
 Syn.: *Mammillaria arizonica* Engelm.
 - i. *Coryphantha vivipara* (Nutt.) Britt. & Rose var. *bisbeeana* (Orcutt) L. Benson
 - j. *Coryphantha vivipara* (Nutt.) Britt. & Rose var. *deserti* (Engelm.) W. T. Marshall
 Syn.: *Mammillaria chlorantha* Engelm.
 - k. *Coryphantha vivipara* (Nutt.) Britt. & Rose var. *rosea* (Clovekey) L. Benson
 - l. *Echinocactus polycephalus* Engelm. & Bigel. var. *polycephalus*
 - m. *Echinocactus polycephalus* Engelm. & Bigel. var. *xeranthemoides* Engelm. ex Coul.

Syn.: *Echinocactus xeranthemoides* Engelm. ex Coul.
 - n. *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *acicularis* L. Benson
 - o. *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *armatus* L. Benson
 - p. *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *chrysocentrus* L. Benson
 - q. *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *engelmannii*
 - r. *Echinocereus engelmannii* (Parry) Lemaire var. *variegatus* (Engelm.) Engelm. ex Rümpler
 - s. *Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *fasciculatus*
 Syn.: *Echinocereus fendleri* (Engelm.) Rümpler var. *fasciculatus* (Engelm. ex B. D. Jackson) N. P. Taylor, *Echinocereus fendleri* (Engelm.) Rümpler var. *robusta* L. Benson; *Mammillaria fasciculata* Engelm.
 - t. *Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *bonkeriae* (Thornber & Bonker) L. Benson.
 Syn.: *Echinocereus boyce-thompsonii* Orcutt var. *bonkeriae* Peebles; *Echinocer-*

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- eus fendleri* (Engelm.) Rümpler var. *bonkerae* (Thornber & Bonker) L. Benson
- u. *Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *boyce-thompsonii* (Orcutt) L. Benson
Syn.: *Echinocereus boyce-thompsonii* Orcutt
- v. *Echinocereus fendleri* (Engelm.) Rümpler var. *boyce-thompsonii* (Orcutt) L. Benson
- w. *Echinocereus fendleri* (Engelm.) Rümpler var. *fendleri*
- x. *Echinocereus fendleri* (Engelm.) Rümpler var. *rectispinus* (Peebles) L. Benson
- y. *Echinocereus ledingii* Peebles
- z. *Echinocereus nicholii* (L. Benson) Parfitt.
Syn.: *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *nicholii* L. Benson
- aa. *Echinocereus pectinatus* (Scheidw.) Engelm. var. *dasyacanthus* (Engelm.) N. P. Taylor
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *neomexicanus* (Coult.) L. Benson
- bb. *Echinocereus polyacanthus* Engelm. (1848) var. *polyacanthus*
- cc. *Echinocereus pseudopectinatus* (N. P. Taylor) N. P. Taylor
Syn.: *Echinocereus bristolii* W. T. Marshall var. *pseudopectinatus* N. P. Taylor, *Echinocereus pectinatus* (Scheidw.) Engelm. var. *pectinatus sensu* Kearney and Peebles, Arizona Flora, and L. Benson, *The Cacti of Arizona and The Cacti of the United States and Canada*.
- dd. *Echinocereus rigidissimus* (Engelm.) Hort. F. A. Haage.
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *rigidissimus* (Engelm.) Engelm. ex Rümpler--Rainbow cactus
- ee. *Echinocereus triglochidiatus* Engelm. var. *gonacanthus* (Engelm. & Bigel.) Boiss.
- ff. *Echinocereus triglochidiatus* Engelm. var. *melanacanthus* (Engelm.) L. Benson
Syn.: *Mammillaria aggregata* Engelm.
- gg. *Echinocereus triglochidiatus* Engelm. var. *mojavensis* (Engelm.) L. Benson
- hh. *Echinocereus triglochidiatus* Engelm. var. *neomexicanus* (Standl.) Standl. ex W. T. Marshall.
Syn.: *Echinocereus triglochidiatus* Engelm. var. *polyacanthus* (Engelm. 1859 non 1848) L. Benson
- ii. *Echinocereus triglochidiatus* Engelm. var. *triglochidiatus*
- jj. *Echinomastus erectocentrus* (Coult.) Britt. & Rose var. *erectocentrus*
Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *erectocentra*
- kk. *Echinomastus intertextus* (Engelm.) Britt. & Rose
Syn.: *Neolloydia intertexta* (Engelm.) L. Benson
- ll. *Echinomastus johnsonii* (Parry) Baxter--Beehive cactus
Syn.: *Neolloydia johnsonii* (Parry) L. Benson
- mm. *Epithelantha micromeris* (Engelm.) Weber ex Britt. & Rose
- nn. *Ferocactus cylindraceus* (Engelm.) Orcutt var. *cylindraceus*--Barrel cactus
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *acanthodes*
- oo. *Ferocactus cylindraceus* (Engelm.) Orcutt var. *eastwoodiae* (Engelm.) N. P. Taylor
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *eastwoodiae* L. Benson; *Ferocactus eastwoodiae* (L. Benson) L. Benson
- pp. *Ferocactus cylindraceus* (Engelm.) Orcutt. var. *lecontei* (Engelm.) H. Bravo
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *lecontei* (Engelm.) Lindsay; *Ferocactus lecontei* (Engelm.) Britt. & Rose
- qq. *Ferocactus emoryi* (Engelm.) Orcutt--Barrel cactus
Syn.: *Ferocactus covillei* Britt. & Rose
- rr. *Ferocactus wislizenii* (Engelm.) Britt. & Rose--Barrel cactus
- ss. *Lophocereus schottii* (Engelm.) Britt. & Rose--Senita
- tt. *Mammillaria grahamii* Engelm. var. *grahamii*
- uu. *Mammillaria grahamii* Engelm. var. *oliviae* (Orcutt) L. Benson
Syn.: *Mammillaria oliviae* Orcutt
- vv. *Mammillaria heyderi* Mühlenpf. var. *heyderi*
Syn.: *Mammillaria gummifera* Engelm. var. *applanata* (Engelm.) L. Benson
- ww. *Mammillaria heyderi* Mühlenpf. var. *macdougalii* (Rose) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *macdougalii* (Rose) L. Benson; *Mammillaria macdougalii* Rose
- xx. *Mammillaria heyderi* Mühlenpf. var. *meiacantha* (Engelm.) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *meiacantha* (Engelm.) L. Benson
- yy. *Mammillaria lasiacantha* Engelm.
- zz. *Mammillaria mainiae* K. Brand.
- aaa. *Mammillaria microcarpa* Engelm.
- bbb. *Mammillaria tetrancistra* Engelm.
- ccc. *Mammillaria thornberi* Orcutt
- ddd. *Mammillaria viridiflora* (Britt. & Rose) Bodeker.
Syn.: *Mammillaria orestra* L. Benson
- eee. *Mammillaria wrightii* Engelm. var. *wilcoxii* (Toumey ex K. Schumann) W. T. Marshall
Syn.: *Mammillaria wilcoxii* Toumey
- fff. *Mammillaria wrightii* Engelm. var. *wrightii*
- ggg. *Opuntia acanthocarpa* Engelm. & Bigel. var. *acanthocarpa*--Buckhorn cholla
- hhh. *Opuntia acanthocarpa* Engelm. & Bigel. var. *coloradensis* L. Benson
- iii. *Opuntia acanthocarpa* Engelm. & Bigel. var. *major* L. Benson
Syn.: *Opuntia acanthocarpa* Engelm. & Bigel. var. *ramosa* Peebles
- jjj. *Opuntia acanthocarpa* Engelm. & Bigel. var. *thornberi* (Thornber & Bonker) L. Benson
Syn.: *Opuntia thornberi* Thornber & Bonker
- kkk. *Opuntia arbuscula* Engelm.--Pencil cholla

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- lll. *Opuntia basilaris* Engelm. & Bigel. var. *aurea* (Baxter) W. T. Marshall--Yellow beavertail
Syn.: *Opuntia aurea* Baxter
- mmm. *Opuntia basilaris* Engelm. & Bigel. var. *basilaris*--Beavertail cactus
- nnn. *Opuntia basilaris* Engelm. & Bigel. var. *longiareolata* (Clover & Jotter) L. Benson
- ooo. *Opuntia basilaris* Engelm. & Bigel. var. *treleasei* (Coult.) Toumey
- ppp. *Opuntia bigelovii* Engelm.--Teddy-bear cholla
Opuntia campii ined.
- qqq. *Opuntia canada* Griffiths (*O. phaeacantha* Engelm. var. *laevis* X *major* and *O. gilvescens* Griffiths).
- rrr. *Opuntia chlorotica* Engelm. & Bigel.--Pancake prickly-pear
- sss. *Opuntia clavata* Engelm.--Club cholla
- ttt. *Opuntia curvospina* Griffiths
- uuu. *Opuntia echinocarpa* Engelm. & Bigel.--Silver cholla
- vvv. *Opuntia emoryi* Engelm.--Devil cholla
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *stanlyi*
- www. *Opuntia engelmannii* Salm-Dyck ex Engelm. var. *engelmannii*--Engelmann's prickly-pear
Syn.: *Opuntia phaeacantha* Engelm. var. *discata* (Griffiths) Benson & Walkington
- xxx. *Opuntia engelmannii* Salm-Dyck ex Engelm. var. *flavospina* (L. Benson) Parfitt & Pinkava
Syn.: *Opuntia phaeacantha* Engelm. var. *flavispina* L. Benson
- yyy. *Opuntia erinacea* Engelm. & Bigel. var. *erinacea*--Mohave prickly-pear
- zzz. *Opuntia erinacea* Engelm. & Bigel. var. *hystericina* (Engelm. & Bigel.) L. Benson
Syn.: *Opuntia hystericina* Engelm. & Bigel.
- aaaa. *Opuntia erinacea* Engelm. & Bigel. var. *ursina* (Weber) Parish--Grizzly bear prickly-pear
Syn.: *Opuntia ursina* Weber
- bbbb. *Opuntia erinacea* Engelm. & Bigel. var. *utahensis* (Engelm.) L. Benson
Syn.: *Opuntia rhodantha* Schum.
- cccc. *Opuntia fragilis* Nutt. var. *brachyarthra* (Engelm. & Bigel.) Coult.
- dddd. *Opuntia fragilis* Nutt. var. *fragilis*--Little prickly-pear
- eeee. *Opuntia fulgida* Engelm. var. *fulgida*--Jumping chain-fruit cholla
- ffff. *Opuntia fulgida* Engelm. var. *mammillata* (Schott) Coult.
- gggg. *Opuntia imbricata* (Haw.) DC.--Tree cholla
- hhhh. *Opuntia X kelvinensis* V. & K. Grant pro sp.
Syn.: *Opuntia kelvinensis* V. & K. Grant
- iiii. *Opuntia kleiniae* DC. var. *tetracantha* (Toumey) W. T. Marshall
Syn.: *Opuntia tetrancistrata* Toumey
- jjjj. *Opuntia kunzei* Rose.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *kunzei* (Rose) L. Benson; *Opuntia kunzei* Rose var. *wrightiana* (E. M. Baxter) Peebles; *Opuntia wrightiana* E. M. Baxter
- kkkk. *Opuntia leptocaulis* DC.--Desert Christmas cactus, Pencil cholla
- llll. *Opuntia littoralis* (Engelm.) Cockl. var. *vaseyi* (Coult.) Benson & Walkington
- mmmm. *Opuntia macrocentra* Engelm.--Purple prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *macrocentra* (Engelm.) L. Benson; *Opuntia violacea* Engelm. ex B. D. Jackson var. *violacea*
- nnnn. *Opuntia macrorrhiza* Engelm. var. *macrorrhiza*--Plains prickly-pear
Syn.: *Opuntia plumbea* Rose
- oooo. *Opuntia macrorrhiza* Engelm. var. *pottsii* (Salm-Dyck) L. Benson
- pppp. *Opuntia martiniana* (L. Benson) Parfitt
Syn.: *Opuntia littoralis* (Engelm.) Cockerell var. *martiniana* (L. Benson) L. Benson; *Opuntia macrocentra* Engelm. var. *martiniana* L. Benson
- qqqq. *Opuntia nicholii* L. Benson--Navajo Bridge prickly-pear
- rrrr. *Opuntia parishii* Orcutt.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *parishii* (Orcutt) L. Benson
- ssss. *Opuntia phaeacantha* Engelm. var. *laevis* (Coult.) L. Benson
Syn.: *Opuntia laevis* Coult.
- tttt. *Opuntia phaeacantha* Engelm. var. *major* Engelm.
- uuuu. *Opuntia phaeacantha* Engelm. var. *phaeacantha*
- vvvv. *Opuntia phaeacantha* Engelm. var. *superbospina* (Griffiths) L. Benson
- wwwww. *Opuntia polyacantha* Haw. var. *juniperina* (Engelm.) L. Benson
- xxxx. *Opuntia polyacantha* Haw. var. *rufispina* (Engelm.) L. Benson
- yyyy. *Opuntia polyacantha* Haw. var. *trichophora* (Engelm. & Bigel.) L. Benson
- zzzz. *Opuntia pulchella* Engelm.--Sand cholla
- aaaaa. *Opuntia ramosissima* Engelm.--Diamond cholla
- bbbbb. *Opuntia santa-rita* (Griffiths & Hare) Rose--Santa Rita prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *santa-rita* (Griffiths & Hare) L. Benson
- ccccc. *Opuntia spinosior* (Engelm.) Toumey--Cane cholla
- ddddd. *Opuntia versicolor* Engelm.--Staghorn cholla
Opuntia vivipara Engelm.
- eeeee. *Opuntia whipplei* Engelm. & Bigel. var. *multigeniculata* (Clokey) L. Benson
- fffff. *Opuntia whipplei* Engelm. & Bigel. var. *whipplei*--Whipple cholla
- ggggg. *Opuntia wigginsii* L. Benson
- hhhhh. *Pediocactus papyracanthus* (Engelm.) L. Benson Grama grass cactus
Syn.: *Toumeyia papyracanthus* (Engelm.) Britt. & Rose
- iiiii. *Pediocactus simpsonii* (Engelm.) Britt. & Rose var. *simpsonii*
- jjjjj. *Peniocereus greggii* (Engelm.) Britt. & Rose var. *greggii*--Night-blooming cereus
Syn.: *Cereus greggii* Engelm.
- kkkkk. *Peniocereus greggii* (Engelm.) Britt. & Rose var. *transmontanus*--Queen-of-the-Night

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- lllll. *Peniocereus striatus* (Brandege) Buxbaum.
 Syn.: *Neoevansia striata* (Brandege) Sanchez-Mejorada; *Cereus striatus* Brandege; *Wilcoxia diguetii* (Webber) Peebles
- mmmmm. *Sclerocactus parviflorus* Clover & Jotter var. *intermedius* (Peebles) Woodruff & L. Benson
 Syn.: *Sclerocactus intermedius* Peebles
- nnnnn. *Sclerocactus parviflorus* Clover & Jotter var. *parviflorus*
 Syn.: *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose var. *roseus* (Clover) L. Benson
- ooooo. *Sclerocactus pubispinus* (Engelm.) L. Peebles
- ppppp. *Sclerocactus spinosior* (Engelm.) Woodruff & L. Benson
 Syn.: *Sclerocactus pubispinus* (Engelm.) L. Benson var. *sileri* L. Benson
- qqqqq. *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose
- rrrrr. *Stenocereus thurberi* (Engelm.) F. Buxbaum--Organ pipe cactus
 Syn.: *Cereus thurberi* Engelm.; *Lemaireocereus thurberi* (Engelm.) Britt. & Rose
8. CAMPANULACEAE Bellflower Family
- a. *Lobelia cardinalis* L. ssp. *graminea* (Lam.) McVaugh--Cardinal flower
- b. *Lobelia fenestralis* Cav.--Leafy lobelia
- c. *Lobelia laxiflora* H. B. K. var. *angustifolia* A. DC.
9. CAPPARACEAE Cappar Family [=Capparidaceae]
Cleome multicaulis DC.--Playa spiderflower
10. COCHLOSPERMACEAE Cochlospermum Family
Amoreuxia gonzalezii Sprague & Riley
11. CHENOPODIACEAE Goosefoot Family
Atriplex hymenelytra (Torr.) Wats.
12. CRASSULACEAE Stonecrop Family
- a. *Dudleya arizonica* (Nutt.) Britt. & Rose
 Syn.: *Echeveria pulverulenta* Nutt. ssp. *arizonica* (Rose) Clokey
- b. *Dudleya saxosa* (M.E. Jones) Britt. & Rose ssp. *collomiae* (Rose) Moran
 Syn.: *Echeveria collomiae* (Rose) Kearney & Peebles
- c. *Graptopetalum bartramii* Rose
 Syn.: *Echeveria bartramii* (Rose) K. & P.
- d. *Graptopetalum bartramii* Rose--Bartram's stonecrop, Bartram's live-forever
 Syn.: *Echeveria bartramii* (Rose) Kearney & Peebles
- e. *Graptopetalum rusbyi* (Greene) Rose
 Syn.: *Echeveria rusbyi* (Greene) Nels. & Macbr.
- f. *Sedum cockerellii* Britt.
- g. *Sedum griffithsii* Rose
- h. *Sedum lanceolatum* Torr.
 Syn.: *Sedum stenopetalum* Pursh
- i. *Sedum rhodanthum* Gray
- j. *Sedum stelliforme* Wats.
13. CROSSOSOMATAACEAE Crossosoma Family
Apacheria chiricahuensis C. T. Mason--Chiricahua rock flower
14. CUCURBITACEAE Gourd Family
Tumamoca macdougalii Rose--Tumamoc globe-berry
15. EUPHORBIACEAE Spurge Family
- a. *Euphorbia plummerae* Wats.--Woodland spurge
- b. *Sapium biloculare* (Wats.) Pax--Mexican jumping-bean
16. FABACEAE Pea Family [=Leguminosae]
- a. *Astragalus corbrensis* Gray var. *maguirei* Kearney
- b. *Astragalus cremnophyllax* Barneby var. *myriorrhaphis* Barneby--Cliff milk-vetch
- c. *Astragalus hypoxylus* Wats.--Huachuca milk-vetch
- d. *Astragalus nutriosensis* Sanderson--Nutrioso milk-vetch
- e. *Astragalus xiphoides* (Barneby) Barneby--Gladiator milk-vetch
- f. *Cercis occidentalis* Torr.--California redbud
- g. *Errazurizia rotundata* (Woot.) Barneby
 Syn.: *Parryella rotundata* Woot.
- h. *Lysiloma microphylla* Benth. var. *thorneri* (Britt. & Rose) Isely--Feather bush
 Syn.: *Lysiloma thorneri* Britt. & Rose
- i. *Parkinsonia aculeata* L.--Jerusalem Thorn
- j. *Phaseolus supinus* Wiggins & Rollins
17. FOUQUIERIAACEAE Ocotillo Family
Fouquieria splendens Engelm.--Ocotillo, coach-whip, monkey-tail
18. GENTIANACEAE Gentian Family
Gentiana wislizenii (Engelm.) J. Gillett
 Syn.: *Gentiana wislizenii* Engelm.
19. LAMIACEAE Mint Family
- a. *Hedeoma diffusum* Green--Flagstaff pennyroyal
- b. *Salvia dorrii* ssp. *mearnsii*
- c. *Trichostema micranthum* Gray
20. LILIACEAE Lily Family
- a. *Allium acuminatum* Hook.
- b. *Allium bigelovii* Wats.
- c. *Allium biseptum* Wats. var. *palmeri* (Wats.) Cronq.
 Syn.: *Allium palmeri* Wats.
- d. *Allium cernuum* Roth. var. *neomexicanum* (Rydb.) Macbr.--Nodding onion
- e. *Allium cernuum* Roth. var. *obtusum* Ckll.
- f. *Allium geyeri* Wats. var. *geyeri*
- g. *Allium geyeri* Wats. var. *tenerum* Jones
- h. *Allium kunthii* Don
- i. *Allium macropetalum* Rydb.
- j. *Allium nevadense* Wats. var. *cristatum* (Wats.) Ownbey
- k. *Allium nevadense* Wats. var. *nevadense*
- l. *Allium parishii* Wats.
- m. *Allium plummerae* Wats.
- n. *Allium rhizomatum* Woot. & Standl. Incl.: *Allium glandulosum* Link & Otto sensu Kearney & Peebles
- o. *Androstephium breviflorum* Wats.--Funnel-lily
- p. *Calochortus ambiguus* (Jones) Ownbey
- q. *Calochortus aureus* Wats.
 Syn.: *Calochortus nuttallii* Torr. & Gray var. *aureus* (Wats.) Ownbey
- r. *Calochortus flexuosus* Wats.--Straggling mariposa
- s. *Calochortus gunnisonii* Wats.
- t. *Calochortus kennedyi* Porter var. *kennedyi*--Desert mariposa
- u. *Calochortus kennedyi* Porter var. *munzii* Jeps.
- v. *Dichelostemma pulchellum* (Salisb.) Heller var. *pauciflorum* (Torr.) Hoover
- w. *Disporum trachycarpum* (Wats.) Benth. & Hook. var. *subglabrum* Kelso
- x. *Disporum trachycarpum* (Wats.) Benth. & Hook. var. *trachycarpum*
- y. *Echeandia flavescens* (Schultes & Schultes) Cruden
 Syn.: *Anthericum torreyi* Baker

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- z. *Eremocrinum albomarginatum* Jones
- aa. *Fritillaria atropurpurea* Nutt.
- bb. *Hesperocallis undulata* Gray--Ajo lily
- cc. *Lilium parryi* Wats.--Lemon lily
- dd. *Lilium umbellatum* Pursh
- ee. *Maianthemum racemosum* (L.) Link. ssp. *amplexicaule* (Nutt.) LaFrankie
 Syn.: *Smilacina racemosa* (L.) Desf. var. *amplexicaulis* (Nutt.) Wats.
- ff. *Maianthemum racemosum* (L.) Link ssp. *racemosum*--False Solomon's seal
 Syn.: *Smilacina racemosa* (L.) Desf. var. *racemosa*; *Smilacina racemosa* (L.) Desf. var. *cylindrata* Fern.
- gg. *Maianthemum stellatum* (L.) Link
 Syn.: *Smilacina stellata* (L.) Desf.--Starflower
- hh. *Milla biflora* Cav.--Mexican star
- ii. *Nothoscordum texanum* Jones
- jj. *Polygonatum cobrense* (Woot. & Standl.) Gates
- kk. *Streptopus amplexifolius* (L.) DC.--Twisted stalk
- ll. *Triteleia lemmonae* (Wats.) Greene
- mm. *Triteleopsis palmeri* (Wats.) Hoover
- nn. *Veratrum californicum* Durand.--False hellebore
- oo. *Zephyranthes longifolia* Hemsl.--Plains rain lily
- pp. *Zigadenus elegans* Pursh--White camas, alkali-grass
- qq. *Zigadenus paniculatus* (Nutt.) Wats.--Sand-corn
- rr. *Zigadenus virescens* (H. B. K.) Macbr.
- 21. MALVACEAE Mallow Family
 - a. *Abutilon parishii* Wats.--Tucson Indian mallow
 - b. *Abutilon thurberi* Gray--Baboquivari Indian mallow
- 22. ONAGRACEAE Evening Primrose Family
 - Camissonia exilis* (Raven) Raven
- 23. ORCHIDACEAE Orchid Family
 - a. *Calypso bulbosa* (L.) Oakes var. *americana* (R. Br.) Luer
 - b. *Coeloglossum viride* (L.) Hartmann var. *virescens* (Muhl.) Luer
 Syn.: *Habenaria viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray
 - c. *Corallorhiza maculata* Raf.--Spotted coral root
 - d. *Corallorhiza striata* Lindl.--Striped coral root
 - e. *Corallorhiza wisteriana* Conrad--Spring coral root
 - f. *Epipactis gigantea* Douglas ex Hook.--Giant helleborine
 - g. *Goodyera oblongifolia* Raf.
 - h. *Goodyera repens* (L.) R. Br.
 - i. *Hexalectris spicata* (Walt.) Barnhart--Crested coral root
 - j. *Listera convallarioides* (Swartz) Nutt.--Broad-leaved twayblade
 - k. *Malaxis corymbosa* (S. Wats.) Kuntze
 - l. *Malaxis ehrenbergii* (Reichb. f.) Kuntze
 - m. *Malaxis macrostachya* (Lexarza) Kuntze--Mountain malaxis
 Syn.: *Malaxis soulei* L. O. Williams
 - n. *Malaxis tenuis* (S. Wats.) Ames
 - o. *Platanthera hyperborea* (L.) Lindley var. *gracilis* (Lindley) Luer
 Syn.: *Habenaria sparsiflora* Wats. var. *laxiflora* (Rydb.) Correll
 - p. *Platanthera hyperborea* (L.) Lindley var. *hyperborea*--Northern green orchid
 Syn.: *Habenaria hyperborea* (L.) R. Br.
 - q. *Platanthera limosa* Lindl.--Thurber's bog orchid
 Syn.: *Habenaria limosa* (Lindley) Hemsley
 - r. *Platanthera sparsiflora* (Wats.) Schlechter var. *ensifolia* (Rydb.) Luer
 - s. *Platanthera sparsiflora* (Wats.) var. *laxiflora* (Rydb.) Correll
 - t. *Platanthera sparsiflora* (Wats.) Schlechter var. *sparsiflora*--Sparsely-flowered bog orchid
 Syn.: *Habenaria sparsiflora* Wats.
 - u. *Platanthera stricta* Lindl.--Slender bog orchid
 Syn.: *Habenaria saccata* Greene; *Platanthera saccata* (Greene) Hulten
 - v. *Platanthera viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray--Long-bracted habenaria
 - w. *Spiranthes michauxiana* (La Llave & Lex.) Hemsl.
 - x. *Spiranthes parasitica* A. Rich. & Gal.
 - y. *Spiranthes romanzoffiana* Cham.--Hooded ladies tresses
- 24. PAPAVERACEAE Poppy Family
 - a. *Arctomecon californica* Torr. & Frém.--Golden-bear poppy, Yellow-flowered desert poppy
- 25. PINACEAE Pine Family
 - Pinus aristata* Engelm.--Bristlecone pine
- 26. POLYGONACEAE Buckwheat Family
 - a. *Eriogonum apachense* Reveal
 - b. *Eriogonum capillare* Small
 - c. *Eriogonum mortonianum* Reveal--Morton's buckwheat
 - d. *Eriogonum ripleyi* J. T. Howell--Ripley's wild buckwheat, Frazier's Well buckwheat
 - e. *Eriogonum thompsonae* Wats. var. *atwoodii* Reveal--Atwood's buckwheat
- 27. PORTULACACEAE Purslane Family
 - a. *Talinum humile* Greene--Pinos Altos flame flower
 - b. *Talinum Marginatum* Greene
 - c. *Talinum validulum* Greene--Tusayan flame flower
- 28. PRIMULACEAE Primrose Family
 - a. *Dodecatheon alpinum* (Gray) Greene ssp. *majus* H. J. Thompson
 - b. *Dodecatheon dentatum* Hook. ssp. *ellisiae* (Standl.) H. J. Thompson
 - c. *Dodecatheon pulchellum* (Raf.) Merrill
 - d. *Primula hunnewellii* Fern.
 - e. *Primula rusbyi* Greene
 - f. *Primula specuicola* Rydb.
- 29. RANUNCULACEAE Buttercup Family
 - a. *Aquilegia caerulea* James ssp. *pinetorum* (Tidest.) Payson--Rocky Mountain Columbine
 - b. *Aquilegia chrysantha* Gray
 - c. *Aquilegia desertorum* (Jones) Ckll.--Desert columbine, Mogollon columbine
 - d. *Aquilegia elegantula* Greene
 - e. *Aquilegia longissima* Gray--Long Spur Columbine
 - f. *Aquilegia micrantha* Eastw.
 - g. *Aquilegia triternata* Payson
- 30. ROSACEAE Rose Family
 - a. *Rosa stellata* Woot.--ssp. *abyssa* A. Phillips Grand Canyon rose
 - b. *Vauquelinia californica* (Torr.) Sarg. ssp. *pauciflora* (Standl.) Hess & Henrickson--Few-flowered Arizona rosewood
- 31. SCROPHULARIACEAE Figwort Family
 - a. *Castilleja mogollonica* Pennell
 - b. *Penstemon albomarginatus* Jones
 - c. *Penstemon bicolor* (Brandeg.) Clokey & Keck ssp. *roseus* Clokey & Keck
 - d. *Penstemon clutei* A. Nels.

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- e. *Penstemon distans* N. Holmgren--Mt. Trumbull beardtongue
Penstemon linarioides spp. *maguirei*
- 32. SIMAROUBACEAE Simarouba Family
Castela emoryi (Gray) Moran & Felger--Crucifixion thorn
Syn.: *Holacantha emoryi* Gray
- 33. STERCULIACEAE Cacao Family
Fremontodendron californicum (Torr.) Coville--Flannel bush
- C. Export-restricted Protected Native Plants
The following list includes those protected native plants which are not included in the highly safeguarded category but are subject to overdepletion if their exportation from this state is permitted.
- D. Salvage-assessed Protected Native Plants
The following list includes those native plants which are not included in either the highly safeguarded or salvage restricted categories but have a sufficient value if salvaged.
 - 1. BIGNONIACEAE Bignonia Family
 - a. *Chilopsis linearis* (Cav.) Sweet var. *arcuata* Fosberg--Desert-willow
 - b. *Chilopsis linearis* (Cav.) Sweet var. *glutinosa* (Engelm.) Fosberg
 - 2. FABACEAE Pea Family [=Leguminosae]
 - a. *Cercidium floridum* Benth.--Blue palo verde
 - b. *Cercidium microphyllum* (Torr.) Rose & Johnst.--Foothill palo verde
 - c. *Olneya tesota* Gray--Desert ironwood
 - d. *Prosopis glandulosa* Torr. var. *glandulosa*--Honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckl.
 - e. *Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.--Western honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson
 - f. *Prosopis pubescens* Benth.--Screwbean mesquite
 - g. *Prosopis velutina* Woot.--Velvet mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.
 - h. *Psoralea argophylla* (Gray) Barneby--Smoke tree.
Syn.: *Dalea spinosa* Gray
- E. Harvest-restricted Protected Native Plants
The following list includes those native plants which are not included in the highly safeguarded category but are subject to excessive harvesting or overcutting because of their intrinsic value.
 - 1. AGAVACEAE Agave Family
 - a. *Nolina bigelovii* (Torr.) Wats.--Bigelow's nolina
 - b. *Nolina microcarpa* Wats.--Beargrass, sacahuista
 - c. *Nolina parryi* Wats.--Parry's nolina
 - d. *Nolina texana* Wats. var. *compacta* (Trel.) Johnst.--Bunchgrass
 - e. *Yucca baccata* Torr. var. *baccata*--Banana yucca
 - f. *Yucca schidigera* Roezl.--Mohave yucca, Spanish dagger
 - 2. FABACEAE Pea Family [=Leguminosae]
 - a. *Olneya tesota* Gray--Desert ironwood
 - b. *Prosopis glandulosa* Torr. var. *glandulosa*--Honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckl.
 - c. *Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.--Western honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson
 - d. *Prosopis pubescens* Benth.--Screwbean mesquite
 - e. *Prosopis velutina* Woot.--Velvet mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

- | | |
|---|---|
| <p>1. <u>Sections Affected</u>
R7-2-307</p> <p>2. <u>The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statutes: A.R.S. §§ 15-203(A) and 15-702
Implementing statute: A.R.S. § 15-702</p> <p>3. <u>The name and address of agency personnel with whom persons may communicate regarding the rule:</u></p> | <p><u>Rulemaking Action</u>
Amend</p> <p>Name: Corinne L., Velasquez, Administrator</p> <p>Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007</p> <p>Telephone: (602) 542-5057</p> <p>Fax: (602) 542-3046</p> |
|---|---|

Notices of Proposed Rulemaking

4. **An explanation of the rule, including the agency's reason for initiating the rule:**
The State Board is proposing to maned rules related to the awarding of a general educational development (GED) diploma and the eligibility requirements for individuals wishing to take the GED.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
It is not anticipated that the rule changes will have any economic, small business, or consumer impact. The amendments being proposed, for the most part, repeal language which duplicates requirements that have already been established by the GED Testing Center. It is not anticipated that this amendment will affect the current operations of GED Testing Centers, the current process of issuing a GED certificate or diploma, or the costs associated with obtaining a GED certificate or diploma.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement is:**
Name: Corrine L. Velasquez
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046
8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
A oral proceeding on the proposed rulemaking is scheduled as follows:
Date: May 19, 1997
Time: 1:30 p.m.
Location: State Board of Education
1535 West Jefferson, Room 417
Phoenix, Arizona 85007
Nature: Oral proceeding
Written comments may be submitted on or before 1:00 p.m. on May 19, 1997, to the contact person listed above.
9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
10. **Incorporations by reference and their location in the rules:**
None.
11. **The full text of the rules follows:**

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

Section
R7-2-307. High School Equivalency certificates Diplomas

ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

R7-2-307. High School Equivalency certificates Diplomas

- A.** For purposes of this rule, the following definitions shall apply:
1. "Department" means the GED Division of the Arizona Department of Education.
 2. "GED Test" means the general educational development test approved by the GEDTS and administered at a GED Testing Center.
 3. "GED Testing Center" means a testing center established by the Department for the purpose of administering GED tests and providing GED testing services pursuant to the requirements established by GEDTS.

A. The Arizona Department of Education may issue a high school equivalency certificate:

1. To any applicant who is 16 years of age or older and has received passing scores on the Tests of Educational Development (GED) which have been administered by an Arizona GED Testing Center.
2. To an applicant who is a member of the U.S. Armed Forces, is 16 years of age or older, and has received scores on the GED test through USAFI, DANTES, or the GED Testing Service, Washington, D.C., provided that the individual's last high school enrollment was in an Arizona high school.

B. Eligibility requirements. Any individual who is 16 years of age or older and who has officially been withdrawn from school for 6 consecutive months preceding testing may take a GED Test.

1. Individuals shall be required to provide the GED Testing Center with positive identification and proof of age; and

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Notices of Proposed Rulemaking

2. Individuals who are at least 16 years of age and under 18 years of age shall also be required to provide:
 - a. A signed statement of consent from a parent or legal guardian, and
 - b. A letter from the last school attended verifying that the individual has officially withdrawn from the school and that the individual has been withdrawn for a minimum of 6 consecutive months preceding the testing date.
- B. The Department may establish Arizona GED Testing Centers as needed at the following state institutions and agencies:
 1. Public school districts.
 2. High schools which are accredited by the appropriate regional accrediting association.
 3. Postsecondary institutions accredited by an agency recognized by the Council on Postsecondary Accreditation.
 4. Arizona Department of Education.
 5. Any other location provided that a need exists and the organization is approved by the GED Testing Service.
- C. Issuance of a diploma. The Department shall issue a high school equivalency diploma to any individual who:
 1. Meets the eligibility requirements specified in subsection (B) and who has received passing scores on the GED Test;
 2. Is a member of the U.S. Armed Forces and has received passing scores on the GED Test through USAFI or DANTES provided that the individual's last high school enrollment was in an Arizona high school. Individuals who have taken the GED Test through USAFI or DANTES shall send their military permanent record and application card to DANTES with a request that the official GED Test scores and application card be forwarded to the Department;
 3. Has received passing scores on the GED Test taken at GEDTS, provided that the Department receives an official transcript directly from GEDTS;
 4. Has not received a high school diploma or high school equivalency certificate or diploma.
- C. Arizona GED Testing Centers shall administer GED tests to applicants who meet the following criteria:
 1. The applicant is at least 16 years of age, has positive identification, proof of age, has not been attending school for six consecutive months preceding application for testing as verified by letter from last school attended, and if the applicant is between 16 years and 18 years of age he/she must present a signed statement of parental consent from his/her parent or legal guardian; or
 2. The applicant is 18 years of age, has positive identification and proof of age.
 3. The applicant has not received a high school diploma or high school equivalency certificate.
 4. The applicant has paid the appropriate fee not to exceed \$15 for the entire GED battery of five tests, or \$3 per test for each test that is retaken.
- ED. The Department shall keep a record of test scores for each individual who has taken the GED test at an Arizona GED Testing Center. Incomplete scores and failing scores will be destroyed after 1 year from date of initial testing.
- D. Arizona GED Testing Centers shall:
 1. Operate in accordance with the policies and procedures established by the Commission on Educational Credit and the Arizona Department of Education and administer and safeguard restricted test materials under the conditions set forth in the GED Manual for Official Centers published by the GED Testing Service;
2. Undertake the following procedures where it is learned that a test is missing:
 - a. The administration of tests must stop immediately;
 - b. The Chief Examiner shall report the missing test, including the test number, form and serial number to the chief administrative officer, the State Administrator of the GED Testing Program, and the Administrator of the GED Testing Service;
 - c. The Chief Examiner shall conduct an investigation to determine the whereabouts of the missing test and the reasons which precipitated the loss, including a detailed review of all test administration procedures and security measures;
 - d. A written report of this investigation and findings shall be submitted to the Chief Administrative Officer, the State Administrator, and the Administrator of the GED Testing Service. This report shall include detailed description of the steps to be initiated to ensure future security of the tests.
 - e. When the State Administrator is satisfied that appropriate security measures will be employed in the GED Testing Center, a recommendation for the resumption of testing at that Center is to be forwarded to the Administrator of the GED Testing Service.
 - f. If the Administrator concurs in the recommendation to resume testing, the State Administrator shall be notified and a copy of the communication forwarded to the Chief Examiner and the Chief Administrative Officer. No testing shall occur until this written notice is received.
 - g. If the investigation has revealed that there was a compromise of a form of the GED test, the remaining stock of testing materials of that specific form shall be returned to the GED Testing Service and replaced with a different form.
 - h. Centers having more than one incident of lost or compromised tests within one year may be closed by the Administrator of the GED Testing Service in consultation with the State Administrator.
3. Provide adequate staff with appropriate professional qualifications for administering the tests;
4. Ensure separation of any instructional activities from its testing functions;
5. Maintain a high level of security with regard to the restricted test materials;
6. Provide adequate physical facilities for administering tests;
7. Administer GED tests in the following manner:
 - a. Administer the entire battery of five tests to an applicant prior to permitting an applicant to be retested in any single area. Each test must be taken within a specified maximum time.
 - b. Require that upon initial testing an applicant complete the battery of five tests within a maximum period of twelve weeks;
 - c. Ensure that each applicant has taken all tests at the same testing center unless the applicant has received a waiver granted by the State Administrator;
 - d. Require a minimum of 30 days to have elapsed following initial testing in an area in which an applicant seeks to be retested;
 - e. Provide a different form of the test to individuals who are being retested;
 - f. Require that applicants complete any retesting within one year of the date of initial testing. If retest-

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- ing is not completed within one year, an applicant must repeat all tests and again pay an initial fee;
- g. Administer tests to eligible handicapped candidates as follows:
- i. Maintain large-type, audio tapes and Braille books as special editions of the GED test.
 - ii. Administer the audio tape or Braille edition of the GED test to totally blind individuals.
 - iii. Administer large-type or taped editions of the GED test to persons with 20% or less vision.
 - iv. Administer the audio tape edition of the GED test to persons medically certified as having ciphering disabilities such as dyslexia.
 - v. Administer the audio tape edition of the GED test to para/quadrilegics and others who require physical assistance in manipulating test booklets.
 - vi. Prohibit its staff from reading any edition of the GED test battery to an examinee.
 - vii. Permit the use of an abacus, brailled paper and brailled ruler.
- E. Passing scores on the GED tests for purposes of receiving a high school equivalency certificate are:
1. A minimum standard score of 35 on each of the five tests described in (D)(7)(a); and
 2. An average standard score of 45 on the five tests described in (D)(7)(a).
- G. In order to receive a high school equivalency certificate from the Department, an individual must comply with the following:
1. An individual who has taken the GED tests in an Arizona GED Testing Center shall submit or have submitted evidence of passing scores to the Department.
 2. An applicant who has taken the GED tests through USAFI, DANTES or the GED Testing Service, Washington, D.C., must request a military permanent record and application card through the Department and indicate when and where the tests were taken. Such applicant should also have his or her application card verified by an educational officer or adviser.
 3. Applicants who have taken the GED tests through USAFI or DANTES should send their military permanent record and application card to DANTES, at the appropriate address which may be obtained from the Arizona Department of Education, with the request that the official GED scores and application card be forwarded to the Arizona Department of Education.
 4. An applicant who has been tested at the GED Testing Service, Washington, D.C., must request that an official transcript be sent directly to the Department from the GED Testing Service.
 5. A fee of \$5 must accompany a request for a duplicate certificate.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-22-906 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statutes: A.R.S. § 36-2903.01(H)
- Implementing statute: A.R.S. § 36-2905.01(B)
- 3. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- Name: Cheri Tomlinson
- Address: AHCCCS Administration
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, Arizona 85034
- Telephone: (602) 417-4781
- Fax: (602) 256-6756
- 4. An explanation of the rule, including the agency's reason for initiating the rule:**
- A current rule, R9-22-906(F), requires a county to submit an annual corrective action plan by June 1 of each year, if its certification error rate, calculated pursuant to A.R.S. § 2905.01(A), exceeds 3%. The proposed rule would change when a county is to submit a corrective action plan. A county would submit a corrective action plan within 60 days of receipt of its certification error date report from AHCCCS.
- 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
- Not applicable.

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6. The preliminary summary of the economic, small business, and consumer impact:

This change will not economically impact the business community, including the small business community, because the change only affects counties whose certification error rate exceeds 3%. This change will benefit the following entities:

- Arizona's taxpayers will benefit because counties whose certification error rate exceeds 3% will be required to respond to erroneous certifications identified in the certification error rate report in a more timely manner. This change will better ensure that only appropriate individuals are eligible to receive AHCCCS covered services.
- Arizona's counties will benefit because, in many instances, they will have a corrective action plan in place earlier. This may result in a reduction in the rate of erroneous certifications and decrease the possibility of the potential sanctions.

AHCCCS will be better able to monitor the performance of counties in certifying eligibility by requiring counties whose certification error rate exceeds 3% to respond within a standard time frame to findings identified in the certification error rate report.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement is:

Name: Cheri Tomlinson
Address: AHCCCS Administration
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4781
Fax: (602) 256-6756

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A public hearing will be held as follows:

Date: May 23, 1997
Time: 9 a.m.
Location: AHCCCS Administration
Gold Room, 3rd Floor
701 East Jefferson
Phoenix, Arizona
Nature: Public hearing

A person may submit written comments on the proposed rules. The written comments should be submitted no later than 5 p.m., May 23, 1997, to the person listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT (AHCCCS)
ADMINISTRATION**

**ARTICLE 9. QUALITY CONTROL REVIEW AND
ANALYSIS**

Section
R9-22-906. Corrective Action Plans for Certification Errors
Corrective action plans for certification errors

**ARTICLE 9. QUALITY CONTROL REVIEW AND
ANALYSIS**

R9-22-906. Corrective Action Plans for Certification Errors
Corrective action plans for certification errors

- A. A county with an a certification error rate of more than 3% shall prepare a corrective action plan to reduce the certification

overall error rate calculated according pursuant to A.R.S. § 36-2905.01(A).

- B. A county shall include in its The corrective action plan shall include procedures to reduce the occurrence of all errors that prevent the county from achieving an allowable eligibility certification the acceptable error rate of 3%.
- C. A county shall describe in its The corrective action plan shall describe ongoing procedures that will be used by the county to:
1. Identify errors,
 2. Analyze the frequency of occurrence of the errors,
 3. Analyze the cause of the errors, and
 4. Develop and implement corrective actions.

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- D. For each corrective action initiative proposed, a county shall prepare a narrative summary that shall be prepared which contains the following information:
1. A statement identifying the error to be addressed by the corrective action initiative,;
 2. An estimate of the error percentage caused by the identified error,;
 3. A summary explaining how the error was discovered (internal, Quality Analysis, Quality Control, etc.),;
 4. A description of the county system that existed when the error occurred,;
 5. A description of the subsequent or proposed changes, to correct the error;
 6. A summary of the expected certification error rate reduction resulting from the implementation of this corrective action initiative,; and
 7. An estimate estimation of when the certification error rate reduction is expected to be achieved.
- E. For each corrective action initiative proposed in a county's, a corrective action plan, the county plan also shall include a work plan that which identifies:
1. The major activities or action steps planned to implement the corrective action initiative;
 2. The individual responsible for each activity or action step;
 3. The proposed timetable for implementing each activity listed in the work plan (start date, planned completion date, etc.);
 4. Who will monitor the implementation of the work plan; and
 5. How the effectiveness of the corrective action plan Corrective Action Plan activity will be evaluated.
- F. A county shall submit an annual Annual corrective action plan plans shall be submitted to the Administration within 60 days of receipt of the Administration's certification error rate report by June 1 of each year.

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TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected

R9-28-601
R9-28-602
R9-28-603
R9-28-604
R9-28-605
R9-28-606
R9-28-607
R9-28-702
R9-28-703
R9-28-704
R9-28-706
R9-28-707
R9-28-709
R9-28-710
R9-28-711
R9-28-801
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R9-28-803
R9-28-803
R9-28-804

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Renum
New Section
Renum
Amend
Repeal
Renum
Amend
Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S § 36-2932(P).

Implementing statutes: A.R.S §§ 36-2903.01(L) and (O), 36-2904(H), 36-2932(E)(3) and (15), (J), (K), and (L)(1), 36-2940, 36-2942, 36-2943, 36-2944, 36-2945, 36-2947(B), 36-2948, and 36-2955.

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheri Tomlinson
Address: AHCCCS
801 E. Jefferson, MD 4200
Phoenix, Arizona 85034

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Telephone: (602) 417-4198

Fax: (602) 256-6756

4. An explanation of the rule, including the agency's reasons for initiating the rule:

Article 6

The proposed rules result from a 5-year-review of this Article which identified nonsubstantive revisions that would make the language more clear, concise, and understandable. Seven rules (R9-28-601 to R9-28-607) in Article 6 set forth operational requirements for contract administration and oversight of ALTCS providers. Several of the changes will result in minimal economic impact to the ALTCS Program Contractors. The changes:

- Require patient, medical, and cost records to be retained for 5 years from the date of final payment or, for records for which payment for services are in question, for 5 years after the date of final disposition or resolution. The change is designed to protect the integrity of services delivered to ALTCS members by ensuring that patient, medical, and cost records are complete and available. At the current time, records must be kept for 5 years or until pending audits are completed and approved by the AHCCCS Director, whichever comes first.
- Eliminate the \$5,000-per-violation sanction limit for noncompliance with ALTCS rules or ALTCS contracts. This complies with requirements in the contractual language between AHCCCS and the Federal Government, in addition to language in the contract between AHCCCS and the ALTCS Program Contractors.
- Add language to automatically extend or modify contracts between AHCCCS and a Program Contractor 60 days from the date of mailing of formal contract extensions or modifications by AHCCCS, even if unsigned by a Program Contractor. The changes also state that if, within the 60 days, the Program Contractor notifies AHCCCS in writing that it refuses to sign the extension or modification, AHCCCS may initiate termination proceedings.

Article 7

The proposed rules resulted from a 5-year-review of this Article which identified nonsubstantive revisions that would make the language more clear, concise, and understandable. Most of the changes proposed to 8 rules in Article 7 that pertaining to standards for payments for the ALTCS program are designed to:

- Enhance the clarity and conciseness of existing language through minor changes to wording and grammar, and
- Update language to conform with statute and actual agency practice.

Other changes include:

- R9-28-703, Claims - Aligns rule language with acute care rule by requiring that reinsurance claims be submitted in accordance with A.A.C. R9-22-703(B).
- R9-28-705, Payments of Program Contractors - Changes are proposed to make ALTCS Program Contractors responsible for payment of all medically necessary covered services provided during prior period coverage. This is currently paid for on a fee-for-service basis by AHCCCS. This change will allow AHCCCS to make an adjustment to the capitation rates paid to ALTCS Program Contractors to cover the cost of providing services during the prior period coverage. Currently, AHCCCS provides prior period eligibility coverage to members who receive services from the effective date of eligibility to the date of enrollment with a Program Contractor. In addition, AHCCCS also provides retroactive coverage for ALTCS covered services in the 3-month period prior to the 1st day of the month of application.
- R9-28-709 - Reinsurance - Reworded to reflect changes made to the way reinsurance claims are identified. Processing is now done on an automated basis, instead of a manual basis, and relies on paid amounts reported by the Program Contractor to AHCCCS.

Article 8

The proposed rules result from a 5-year-review of this Article which identified nonsubstantive revisions that would make the language more clear, concise, and understandable. Essentially these rules were changed to be consistent with 9 A.A.C. 22, Article 8 (Grievance and Appeals) rules. Four rules (R9-28-801 through R9-28-804) within Article 8 (Grievance and Appeal Process) are being incorporated into 3 rules (R9-28-801 through R9-28-803) to:

- Align ALTCS rules with AHCCCS acute care rules,
- Enhance the clarity and conciseness of existing language through minor changes to wording and grammar, and
- Conform with actual agency practice.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

Article 6

These changes are necessary to ensure that all ALTCS contracts are updated in a timely manner. There will be no impact from this change which applies only to the 2 Program Contractors that are private business entities. This language does not apply to DES/

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DDD which provides services to the developmentally disabled population per A.R.S. § 36-2933(E), the 2 counties (Maricopa and Pima) that are required by A.R.S. § 36-2940(A) to be Program Contractors, and the 3 other counties (Cochise, Pinal, and Yavapai) which elected to provide ALTCS services per A.R.S. § 36-2940(F).

Other proposed changes are designed to: 1) align ALTCS rules with AHCCCS acute care rules; 2) move certain language (that is, appeals language in R9-28-605) to more appropriate Articles; and 3) enhance the clarity and conciseness of existing language.

Article 7

There is a 0 to nominal economic impact to the small business community, including the ALTCS providers that could be considered as small businesses. The proposed changes pertain only to standards for payment for ALTCS Program Contractors and not to the reimbursement relationship that ALTCS Program Contractors establish with ALTCS providers.

There will be a minimal economic impact on ALTCS Program Contractors for the cost of retaining patient, medical, and cost records for 5 years from the date of final payment or, for records for which payment for services are in question, for 5 years after the date of final disposition or resolution. This change will impact only those Program Contractors who are in violation of their contracts. There is a possibility of a larger monetary impact as a higher monetary sanction may be levied, however, sanctions levied on Program Contractors are commensurate with the violation. In the past, AHCCCS has used sanction in a limited fashion. Since February 1994, AHCCCS has levied approximately \$6,500 in sanctions to ALTCS Program Contractors and has sanctioned the \$5,000-per-violation limit only once.

Both AHCCCS and the Program Contractors will benefit from the alignment with acute care rules and user-friendly improvements to the rules.

Article 8

A nominal economic impact for reproducing and mailing costs will be borne by the party petitioning for a rehearing or review of the Director's decision. The proposed changes require that a copy of the petition be sent by the moving party to the opposing party. The moving party could include ALTCS Providers, ALTCS Members, ALTCS Program Contractors, or American Indian tribes that provide ALTCS services.

The proposed changes could also result in a nominal economic impact to the state because eligible persons or members whose benefits have been continued may be financially liable for all benefits received during a period of eligibility, if a discontinuance decision is upheld by the Director. Current rule states that appellants shall be financially liable. The impact of this change would be modest because, in actuality, appellants do not currently always assume financial liability in such instances.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson
Address: AHCCCS
801 E. Jefferson, MD 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A public hearing will be held as follows:

Date: May 23, 1997
Time: 1:00 p.m.
Location: AHCCCS Administration
Gold Room, 3rd Floor
701 East Jefferson
Phoenix, Arizona

A person may submit written comments on the proposed rules. The written comments should be submitted not later than 5:00 p.m., May 23, 1997, to the person listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
Not applicable.

11. The full text of the rules follows:

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TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 6. PROGRAM CONTRACTS AND PROCUREMENT PROCESS

- R9-28-601. General
- R9-28-602. Contracts
- R9-28-603. Subcontracts
- R9-28-604. Request for Proposals (RFP); Contract Award
~~Request for proposals (RFP); contract award~~
- R9-28-605. Contract or Proposal Protests; Appeals ~~Contract or proposal protests; appeals~~
- R9-28-606. Contract Amendments; Mergers; Reorganizations
~~Contract amendments; mergers; reorganizations~~
- R9-28-607. Contract Sanctions

ARTICLE 7. STANDARDS FOR PAYMENTS

- R9-28-702. Prohibition Against Charges to Members or Eligible Persons ~~Prohibition against charges to members or eligible persons~~
- R9-28-703. Claims
- R9-28-704. Transfer of Payments ~~Transfer of payments~~
- R9-28-706. Payments by the Administration for Services Provided to Eligible Persons
- R9-28-707. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care ~~Program Contractor's Liability to Noncontracting Providers~~
- R9-28-709. Reinsurance
- R9-28-710. Capitation Payments to Program Contractors ~~Capitated payments to program contractors~~
- R9-28-711. Payments Made on Behalf of a Program Contractor; Recovery of Funds; Postpayment Reviews

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS

- R9-28-801. General Provisions for All Grievance and Appeals ~~Eligibility Appeals and Hearing Requests for Applicants or Recipients of ALTCS Services~~
- R9-28-802. Eligibility Appeals and Hearing Requests for Applicants or Recipients of ALTCS Services ~~Member Grievances~~
- R9-28-803. Grievances ~~Nonmember Grievances~~
- R9-28-804. Program Contractor, Provider, Noncontracting Provider, and County Grievances

ARTICLE 6. PROGRAM CONTRACTS AND PROCUREMENT PROCESS

R9-28-601. General

- A. Contracts to provide services under the ALTCS shall be established between the Administration and qualified program contractors in conformance with the requirements ~~set forth~~ in this Article.
- B. Contracts and subcontracts entered into in accordance with this Article ~~are shall become~~ public records on file with the Administration. ~~All contracts and subcontracts shall include an agreement to comply with all applicable federal and state statutes and rules.~~
- C. Except as otherwise provided by law, this Article applies to the expenditure of all public monies, including federal assistance monies, by the Administration for ALTCS services.
- D. The Director may conduct investigations of persons who have ownership or management interests in offerors and affiliated organizations of the offeror.

- E. ~~Proposals shall be opened publicly, and the name of each offeror shall be read publicly and recorded.~~ All other information contained in the proposals ~~is shall be~~ confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of discussions. The proposals shall be open for public inspection after contract award, unless upon an offeror's written request for nondisclosure, the Director makes a determination that disclosure is not in the best interests of the state.
- F. Failure of an offeror to supply information required by the ~~RFP request for proposals~~ is sufficient basis for the rejection of any proposal.
- G. Disclosure by an offeror of the terms of its proposal to another offeror or to any other ~~individual person~~ prior to contract award is prohibited and ~~is shall be~~ grounds for rejecting a proposal.
- H. All contract records shall be ~~retained for a period of five years~~ and disposed of in accordance with A.R.S. § 41-2550.

R9-28-602. Contracts

- A. Each contract between the Administration and a qualified program contractor shall be in writing and ~~contain shall contain~~ at least the information listed below:
 1. ~~The Full disclosure of the method and amount of compensation or other consideration to be received by the program contractor; contractor.~~
 2. ~~The Identification of the name and address of the program contractor; contractor.~~
 3. ~~The Identification of the population to be covered by the contract; contract.~~
 4. The amount, duration, and scope of services to be provided, or for which compensation will be ~~paid; paid.~~
 5. ~~The Specification of the term of the contract, including the beginning and ending dates, as well as methods of extension, renegotiation, and termination; termination.~~
 6. A provision that the Director or the Secretary of the U.S. Department of Health and Human Services may evaluate, through inspection or other means, the quality, appropriateness, or timeliness of services performed under the ~~contract; contract.~~
 7. A description of ~~the member's patient services, medical and cost recordkeeping systems and a provision that the Director or the Secretary of the U.S. Department of Health and Human Services may audit and inspect any of the program contractor's records that pertain to services performed and determinations of amounts payable under the contract.~~ ~~These~~ Such records shall be maintained by the program contractor for ~~5 five years from the date of final payment or for records relating to costs and expenses to which the Administration has taken exception, 5 years after the date of final disposition or resolution of the exception; or until any pending audits are completed and approved by the Director, whichever first occurs.~~
 8. A provision that program contractors shall maintain all forms, records, and statistical information required by the Director for purposes of audit and program management. ~~This~~ Such material, including files, correspondence, and related information pertaining to services rendered or claims for payments, ~~is shall be~~ subject to inspection and copying by the Administration and the U.S. Department of Health and Human Services during normal business

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- hours at the place of business of the individual person or organization maintaining the records; records. The cost of duplicating materials shall be borne by the Administration.
9. ~~A provision that records pertaining to eligible persons or members be retained in accordance with the record retention requirements of 45 CFR 74, Subpart D, incorporated by reference herein and on file with the Office of the Secretary of State.~~
9. 10. ~~A provision that the program contractor safeguard information; information about eligible persons and members as required by 42 CFR 431, Subpart F, incorporated by reference herein and on file with the Office of the Secretary of State.~~
11. ~~Identification of any activities to be performed by the program contractor affecting eligible persons and members that are related to third-party liability requirements as prescribed in 42 CFR 433, Subpart D, incorporated by reference herein and on file with the Office of the Secretary of State.~~
10. 12. ~~Specification of those Functions functions that which may be subcontracted; subcontracted, including a provision that any subcontract affecting categorically eligible individuals meets the requirements of 42 CFR 434.6(b), incorporated by reference herein and on file with the Office of the Secretary of State.~~
11. 13. ~~A provision that the program contractor arrange for the collection from all probable sources of 3rd third-party liability except for uninsured and underinsured motorist insurance, 3rd third-party liability insurance, and tort-feasors; tort-feasors.~~
12. 14. ~~A provision that the program contractor shall not bill or attempt to collect from a the member for any covered service except as may be authorized by statute or this Chapter; Chapter.~~
13. 15. ~~A provision that the contract shall not be assigned or transferred without the prior written approval of the Director; Director.~~
14. 16. ~~A provision that specifies Procedures procedures for enrollment or re-enrollment of the members; covered population.~~
15. 17. ~~A provision that specifies Procedures procedures and criteria for terminating the contract; contract.~~
16. 18. ~~A provision that any cost-sharing requirements imposed for services furnished to members are in accordance with 42 CFR 447.50 through 447.58 as of October 1, 1995, which is incorporated by reference herein and on file with the Administration and the Office of the Secretary of State. State This incorporation by reference contains no future editions or amendments;~~
17. 19. ~~A provision in the contract or proposal on which the contract is based that specifies specifies:~~
 - a. ~~the The actuarial basis for computation of capitation fees, if applicable;~~
 - b. ~~That the capitation fees and any other payments provided for in the contract do not exceed the payment limits set forth in 42 CFR 447.361, incorporated by reference herein and on file with the Office of the Secretary of State.~~
18. 20. ~~Provisions for terminating regarding termination of enrollment and choice of health professional; professional that are consistent with the requirements of 42 CFR 434.27 and 434.29, incorporated by reference herein and on file with the Office of the Secretary of State.~~
19. 21. ~~A provision that a program contractor shall provide for an internal grievance procedure that:~~
 - a. ~~Is approved in writing by the Administration;~~
 - b. ~~Provides for prompt resolution; and~~
 - c. ~~Ensures Assures the participation of individuals with authority to require corrective action.~~
20. 22. ~~A provision that requires the program contractor to maintain a comprehensive internal quality management assurance system consistent with ALTCS rules; rules and 42 CFR 434.34, incorporated by reference herein and on file with the Office of the Secretary of State.~~
21. 23. ~~A provision that requires the program contractor to submit marketing plans, procedures, and materials to the Administration for approval before implementation; implementation.~~
22. 24. ~~A statement in the contract or proposal on which the contract is based that all representations made by program contractors or authorized representatives are truthful and complete to the best of their knowledge; knowledge.~~
23. 25. ~~A provision that the program contractor is shall be fully responsible for all tax obligations, Worker's Workers' Compensation Insurance, and all other applicable insurance coverage, for itself and its employees, and that the Administration has shall have no responsibility or liability for any of the such taxes or insurance coverage; coverage.~~
24. 26. ~~A provision that the program contractor agrees to comply with all applicable federal and state statutes and rules; rules.~~
25. 27. ~~A provision that the program contractor shall report each member's case management plan and any changes in a manner prescribed by the Director; Director.~~
26. 28. ~~A provision that members needing therapeutic leave or bed-hold days shall be returned to the same facility; facility.~~
27. 29. ~~A provision that requires program contractors to submit all RFPs for services to the Administration for review and written approval prior to issuance; issuance.~~
28. 30. ~~A provision that requires the program contractor to submit an annual comprehensive plan in response to the annual contract renewal amendment for delivery of services to the Administration as defined in A.R.S. § 36-2940 to the Administration; A.R.S. § 36-2940.~~
29. 31. ~~An Agreement to hold harmless and indemnify the state, the Director, the Administration and members against claims, liabilities, judgments, costs and expenses with respect to 3rd third parties, which may accrue against the state, the Director, the Administration or members, through the negligence, omission or intentional conduct of the program contractor; contractor.~~
30. 32. ~~A provision that program contractors shall establish and implement a plan for preventing fraud or abuse by eligible persons, members, providers and noncontracting providers; providers.~~
31. 33. ~~A provision that program contractors agree to comply with all 3rd third-party liability and coordination of benefits requirements established by state and federal rules; rules.~~
32. 34. ~~A provision that program contractors agree to comply with financial and performance audit standards which satisfy R9-28-512 and R9-28-513; R9-28-513.~~
33. 35. ~~A provision that program contractors agree to comply with inspection of care reviews; reviews.~~
34. 36. ~~A provision that program contractors may forfeit payments if the program contractor fails to comply with the provisions of its contract or this Chapter; Chapter.~~

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- hours at the place of business of the individual person or organization maintaining the records; records. The cost of duplicating materials shall be borne by the Administration.
9. A provision that records pertaining to eligible persons or members be retained in accordance with the record retention requirements of 45 CFR 74, Subpart D, incorporated by reference herein and on file with the Office of the Secretary of State.
10. A provision that the program contractor safeguard information; information about eligible persons and members as required by 42 CFR 431, Subpart F, incorporated by reference herein and on file with the Office of the Secretary of State.
11. Identification of any activities to be performed by the program contractor affecting eligible persons and members that are related to third-party liability requirements as prescribed in 42 CFR 433, Subpart D, incorporated by reference herein and on file with the Office of the Secretary of State.
12. Specification of those Functions functions that which may be subcontracted; subcontracted, including a provision that any subcontract affecting categorically eligible individuals meets the requirements of 42 CFR 434.6(b), incorporated by reference herein and on file with the Office of the Secretary of State.
13. A provision that the program contractor arrange for the collection from all probable sources of 3rd third-party liability except for uninsured and underinsured motorist insurance, 3rd third-party liability insurance, and tort-feasors; tort-feasors.
14. A provision that the program contractor shall not bill or attempt to collect from a the member for any covered service except as may be authorized by statute or this Chapter; Chapter.
15. A provision that the contract shall not be assigned or transferred without the prior written approval of the Director; Director.
16. A provision that specifies Procedures procedures for enrollment or re-enrollment of the members; covered population.
17. A provision that specifies Procedures procedures and criteria for terminating the contract; contract.
18. A provision that any cost-sharing requirements imposed for services furnished to members are in accordance with 42 CFR 447.50 through 447.58 as of October 1, 1995, which is incorporated by reference herein and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
19. A provision in the contract or proposal on which the contract is based that specifies specifies:
- a. the The actuarial basis for computation of capitation fees, if applicable;
 - b. That the capitation fees and any other payments provided for in the contract do not exceed the payment limits set forth in 42 CFR 447.361, incorporated by reference herein and on file with the Office of the Secretary of State.
20. Provisions for terminating regarding termination of enrollment and choice of health professional; professional that are consistent with the requirements of 42 CFR 434.27 and 434.29, incorporated by reference herein and on file with the Office of the Secretary of State.
21. A provision that a program contractor shall provide for an internal grievance procedure that:
- a. Is approved in writing by the Administration;
 - b. Provides for prompt resolution; and
 - c. Ensures Assures the participation of individuals with authority to require corrective action.
22. A provision that requires the program contractor to maintain a comprehensive internal quality management assurance system consistent with ALTCS rules; rules and 42 CFR 434.34, incorporated by reference herein and on file with the Office of the Secretary of State.
23. A provision that requires the program contractor to submit marketing plans, procedures, and materials to the Administration for approval before implementation; implementation.
24. A statement in the contract or proposal on which the contract is based that all representations made by program contractors or authorized representatives are truthful and complete to the best of their knowledge; knowledge.
25. A provision that the program contractor is shall be fully responsible for all tax obligations, Worker's Workers' Compensation Insurance, and all other applicable insurance coverage, for itself and its employees, and that the Administration has shall have no responsibility or liability for any of the such taxes or insurance coverage; coverage.
26. A provision that the program contractor agrees to comply with all applicable federal and state statutes and rules; rules.
27. A provision that the program contractor shall report each member's case management plan and any changes in a manner prescribed by the Director; Director.
28. A provision that members needing therapeutic leave or bed-hold days shall be returned to the same facility; facility.
29. A provision that requires program contractors to submit all RFPs for services to the Administration for review and written approval prior to issuance; issuance.
30. A provision that requires the program contractor to submit an annual comprehensive plan in response to the annual contract renewal amendment for delivery of services to the Administration as defined in A.R.S. § 36-2940 to the Administration; A.R.S. § 36-2940.
31. An Agreement to hold harmless and indemnify the state, the Director, the Administration and members against claims, liabilities, judgments, costs and expenses with respect to 3rd third parties, which may accrue against the state, the Director, the Administration or members, through the negligence, omission or intentional conduct of the program contractor; contractor.
32. A provision that program contractors shall establish and implement a plan for preventing fraud or abuse by eligible persons, members, providers and noncontracting providers; providers.
33. A provision that program contractors agree to comply with all 3rd third-party liability and coordination of benefits requirements established by state and federal rules; rules.
34. A provision that program contractors agree to comply with financial and performance audit standards which satisfy R9-28-512 and R9-28-513; R9-28-513.
35. A provision that program contractors agree to comply with inspection of care reviews; reviews.
36. A provision that program contractors may forfeit payments if the program contractor fails to comply with the provisions of its contract or this Chapter; Chapter.

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35. 37. A provision that program contractors shall establish and submit to the Administration Director for approval a utilization control system plan which satisfies A.R.S. § 36-2947 and R9-28-511; R9-28-511.
36. 38. A provision that program contractors shall develop and submit to the Administration Director for approval a plan for its case management system which satisfies R9-28-510; R9-28-510.
37. 39. A provision that program contractors shall notify the Administration if a member is no longer eligible due to death or a move out of the state; state.
38. 40. A provision that program contractors shall comply with the uniform accounting system established by the Administration; Director.
39. 41. A provision that program contractors may forfeit funds to the Administration to recompense it for federal sanctions or penalties placed on the Administration for errors made by the program contractor; contractor.
40. 42. A provision that program contractors shall suspend or reduce services upon notification by the Administration pursuant to A.R.S. § 36-2958; 36-2958.
41. 43. A provision that program contractors shall provide encounter reporting in the form and format prescribed by the Administration; and Director.
42. 44. A provision that if at any time federal monies are denied, not received or become unavailable for any reason, the operation of ALTCS is suspended.
- B. Each contract shall include all provisions necessary to ensure compliance with the applicable requirements of 42 CFR 434, Subpart C, and 45 CFR 74, Appendix G, incorporated by reference herein and on file with the Office of the Secretary of State.

R9-28-603. Subcontracts

- A. Approval. Any subcontract entered into by a program contractor to provide covered services to ALTCS members or any amendment to a subcontract shall be subject to review and prior written approval by the Director. No subcontract alters the legal responsibility of a the program contractor to the Administration to ensure assure that all activities under the contract are carried out.
- B. Subcontracts. Each subcontract shall be in writing and include the requirements listed below:
1. That A specification that the subcontract is to shall be governed by, and construed in accordance with all laws, rules and contractual obligations of the program contractor;
 2. Provision An agreement to notify the Administration in the event the agreement with the program contractor is amended or terminated;
 3. Provision An agreement that assignment or delegation of the subcontract is shall be void unless prior written approval is obtained from the Administration;
 4. Provision An agreement to hold harmless the state, the Director, the Administration and members in the event the program contractor cannot or will not pay for covered services performed by the provider;
 5. Provision A provision that the subcontract and subcontract amendments are subject to review and approval by the Administration Director as set forth in this Chapter and that a subcontract or subcontract amendment may be terminated, rescinded or canceled by the Administration Director for a violation of the provisions of this Chapter;
 6. Provision An agreement to hold harmless and indemnify the state, the Director, the Administration and members against claims, liabilities, judgments, costs and expenses with respect to 3rd third parties, which may accrue

against the State, the Director, the Administration or members, through the negligence, omission or intentional conduct of the provider;

7. The requirements contained in R9-28-602(A)(1) through (7), (9), (10), (14), (15), (17), (23), (24), and (25) subsection (A), paragraphs (1) through (7), (9) through (11), (15), (16), (18), and (26), be substituted when the term "provider" wherever the term "program contractor" is used;
8. Provision that members are not held liable for payment to providers in the event of Contractor's bankruptcy, in compliance with 42 CFR 434, Subpart C, as of October 1, 1995, which is incorporated by reference and on file with the Administration and the Office of Secretary of State. This incorporation by reference contains no future editions or amendments.

R9-28-604. Request for Proposals (RFP); Contract Award
Request for proposals (RFP); contract award

- A. A RFP request for proposals may be canceled or any and all proposals may be rejected in whole or in part if it is deemed by the Director to be in the best interests of the state. The reasons for cancellation or rejection shall be made part of the contract file.
- B. RFP content. This Section does not apply to contracting between the Administration and the counties or the Arizona Department of Economic Security pursuant to A.R.S. § 36-2940. The items listed below shall be included in a RFP request for proposals:
1. The instructions and information to offerors concerning the proposal submission requirements, including:
 - a. The time and date set for the proposal opening,
 - b. The address of the office at which proposals are to be received, and
 - c. The period during which the proposal shall remain open, and any other special information;
 2. The service description, covered populations, geographic coverage, specifications and a delivery or performance schedule;
 3. The contract terms and conditions, including bonding or other security requirements, if applicable;
 4. A provision for the award of contracts by categories of members or services in order to secure the most financially advantageous bids for the System;
 5. A provision that each qualified bid be entered with separate categories for the distinct groups of members or services to be covered by the proposed contracts, as set forth in the request for proposal;
 6. A provision for a 2nd second-round competitive bid procedure to request voluntary price reduction of bids from only those bidders which have been tentatively selected for award, before the final award or rejection of bids;
 7. The factors to be used in the evaluation;
 8. The location of and method for obtaining documents that are incorporated by reference;
 9. The requirement that the offeror acknowledge receipt of all amendments issued by the Administration;
 10. The type of services required and a description of the work involved;
 11. The type of contract to be used and a copy of a proposed contract form or provisions;
 12. The estimated length of time during which service will be required;
 13. A requirement for cost or pricing data;
 14. The minimum information that the proposal shall contain; and

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15. A provision requiring that the offeror certify that the submission of the proposal does not involve collusion or other anticompetitive practice.

C. Evaluation of proposals.

1. As provided in the ~~RFP request for proposals~~, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the ~~RFP request for proposals~~. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
2. As part of its discussions, the Administration may conduct a ~~2nd second-round~~ competition bid procedure to request voluntary price reduction of bids from bidders which have been tentatively selected for award, before the final award or rejection of bids.
3. If discussions are conducted pursuant to subsection (C)(1) paragraph (1) of this subsection, the Administration may issue a written request for best and final offers. The request shall set forth the date, time, and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the Administration makes a determination that it is advantageous to the state to conduct further discussions or change the state's requirements. The request for best and final offers shall inform the offerors that if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer shall be construed as their best and final offer.
4. Proposal evaluation shall be based on the evaluation factors set forth in the ~~RFP request for proposals~~.
5. Offerors whose proposals or offers are rejected shall be notified in writing of the rejection. The rejection notice shall be made part of the contract file and public record.

D. Contract award.

1. ~~In competitive counties, the Administration shall take~~ Taking into consideration the evaluation factors set forth in the ~~RFP request for proposals, and the contract award~~ the contract shall be made to the responsible and responsive ~~offeror offerors with the lowest qualified offers~~ which are determined to be most advantageous to the state. ~~Contracts may be awarded by categories of members of services in order to secure the most financially advantageous bids for the System. The Administration may award multiple contracts, to the extent possible for each county in the state for the purpose of limiting the number of high-risk persons which may be included in any contract.~~
2. ~~In mandated counties and those counties exercising their right of first referral, the Administration requires the County offeror to submit a satisfactory comprehensive plan for delivery of services in response to the solicitation.~~
3. The contract file shall contain the basis on which the award is made. A contract shall not be awarded to any program contractor which will cause the System to lose any federal monies to which it is otherwise entitled.

R9-28-605. Contract or Proposal Protests; Appeals Contract or proposal protests; appeals

- A.** Resolution of proposal protests. The procurement officer issuing the ~~RFP request for proposals~~ pursuant to R9-28-604 shall

have the authority to resolve proposal protests. Appeals from the decisions of the procurement officer may be made to the Director pursuant to this Section. This Section does not apply to contracting between the Administration and the counties or the Arizona Department of Economic Security pursuant to A.R.S. § 36-2940.

B. Filing of a protest:

1. Any interested party may protest a ~~RFP request for proposals~~ issued by the Administration, or the proposed award or the award of a ~~an~~ ALTCS program contractor contract by filing a protest with the procurement officer. ~~"Interested party" means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract or by the failure to award a contract.~~ This Section shall not apply to grievances related to contract performance. Such grievances are governed by ~~R9-28-803, R9-28-804~~.
2. Content of protest. The protest shall be in writing and shall include the following information:
 - a. The name, address and telephone number of the protester;
 - b. The signature of the protester or its representative;
 - c. Identification of the request for proposals or contract number;
 - d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - e. The relief requested.

C. Time for filing protests:

1. Protests concerning improprieties in a request for proposals. Protests based upon alleged improprieties in the request for proposals that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.
2. In cases other than those covered in subsection (C)(1) paragraph (1) of this subsection, protests shall be filed within ~~10 ten~~ days after the protester knows or should have known the basis of the protest, whichever is earlier.

D. Stay of procurements during the protest. If a protest is filed before the award of a contract, the award may be made, unless the Director makes a written determination that there is a reasonable probability that the protest will be sustained and the stay of award of the contract is not contrary to the best interests of the state.

E. Decision by the procurement officer:

1. The procurement officer shall issue a written decision within 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
2. The procurement officer shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
3. The time limit for decisions set forth in subsection (E)(1) paragraph (1) of this subsection may be extended by the Director for a reasonable time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
4. If the procurement officer fails to issue a decision within the time limits set forth in subsections (E)(1) or (3) paragraph (1) or (3) of this subsection, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

F. Remedies:

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1. If the procurement officer sustains the protest in whole or part and determines that the request for proposals, proposed contract award, or contract award does not comply with applicable statutes and rules, the officer shall implement an appropriate remedy.
 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the state, the urgency of the procurement and the impact of the relief on the Administration's mission.
 3. A remedy will be deemed appropriate if it includes 1 one or more of the following:
 - a. Decline to exercise an option to renew under the contract;
 - b. Terminate the contract;
 - c. Reissue the request for proposals;
 - d. Issue a new request for proposals; or
 - e. Award a contract consistent with procurement statutes and rules.
- G. Appeals to the Director:**
1. An appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the Director within ~~5~~ five days from the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
 2. Content of appeal. The appeal shall contain:
 - a. The information set forth in subsection (B);
 - b. A copy of the decision of the procurement officer;
 - c. The precise factual or legal error in the decision of the procurement officer from which the appeal is taken; and
 - d. A request for hearing unless the appellant desires that the Director's decision be based solely upon the contract record as it then exists.
- H. Stay of procurement during appeal.** If an appeal is filed before an award of contract and the award of the contract was stayed by the procurement officer pursuant to subsection (D) of this Section, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.
- I. Dismissal before hearing.** The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:
1. The appeal does not state a valid basis for protest;
 2. The appeal is untimely pursuant to subsection (G) of this Section; or
 3. The appeal is moot.
- J. Hearing.** ~~Hearings requested pursuant to the rule shall be conducted as described in 9 A.A.C. 28, Article 8. Hearings on appeals of proposal protest decisions shall be conducted as contested cases pursuant to this Chapter and the Arizona Administrative Procedure Act (Arizona Revised Statutes, Title 41, Chapter 6, Article 1).~~
- K. Remedies.** ~~If the Director sustains the appeal in whole or part and determines that a request for proposals, proposed award, or award does not comply with procurement statutes and rules, remedies shall be implemented pursuant to subsection (F) of this Section.~~
- L. Hearing procedures:**
1. ~~If a hearing is required or permitted under this Section, the Director shall appoint a hearing officer.~~
 2. ~~If a hearing is required or permitted, the hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.~~
 3. ~~The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.~~
 4. ~~The hearing officer may:~~
 - a. ~~Hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;~~
 - b. ~~Require parties to state their positions concerning the various issues in the proceeding;~~
 - c. ~~Require parties to produce for examination those relevant witnesses and documents under their control;~~
 - d. ~~Rule on motions and other procedural items on matters pending before such officer;~~
 - e. ~~Regulate the course of the hearing and conduct of participants;~~
 - f. ~~Establish time limits for submission of motions or memoranda;~~
 - g. ~~Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:~~
 - i. ~~Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;~~
 - ii. ~~Excluding all testimony of an unresponsive or evasive witness; and~~
 - iii. ~~Expelling the person from further participation in the hearing;~~
 - h. ~~Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;~~
 - i. ~~Administer oaths or affirmations.~~
 5. ~~A transcribed record of the hearing shall be made available at cost to the requesting party.~~
- M. Recommendation by the hearing officer:**
1. ~~The hearing officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.~~
 2. ~~The Director may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.~~
- N. Decision by the Director.** ~~The decision by the Director shall be sent to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may within ten days of receipt request a rehearing.~~
- O. Rehearing of Director's decision:**
1. ~~Any party, including a procurement officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision specifying the particular grounds:~~
 - a. ~~The request for rehearing shall be filed with the Director within ten days after receipt of the decision.~~
 - b. ~~The request shall be clearly designated as a "request for rehearing".~~
 2. ~~The Director or hearing officer may require the filing of written briefs and may provide for oral argument.~~
 3. ~~A rehearing of the decision may be granted for any of the following causes:~~

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- a. Irregularity in the proceedings or an abuse of discretion by the Director depriving the requesting party of a fair hearing;
 - b. Misconduct of the Director, his staff or the hearing officer or any party;
 - c. Accident or surprise that could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - e. Excessive or insufficient penalties;
 - f. Error in the admission or rejection of evidence or other error of law occurring at the hearing;
 - g. A showing that the decision is not justified by the evidence or is contrary to law.
4. The Director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.
5. The Director, within the time for filing a request for rehearing under this subsection, may on his own initiative order a rehearing of his decision for any reason for which he might have granted a rehearing on request of a party.
6. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12-901 et seq.
- P. Failure to exhaust administrative remedies. Failure to submit a protest and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial review.

R9-28-606. Contract Amendments; Mergers; Reorganizations

- A.** Any merger, reorganization, or change in ownership of a contractor shall require that the contractor submit the contract between the Administration and the contractor for amendment and prior approval by the Director. Any merger, reorganization or change in ownership of a program contractor shall constitute a contract amendment which requires the written prior approval of the Director. Additionally, any merger, reorganization, or change in ownership of a provider (A.R.S. §§ 36-2931 and 36-2901) subcontractor that is related to or affiliated with the program contractor shall require constitute a contract amendment which requires the written prior approval of the Director. To be effective, contract amendments shall be in reduced to writing and executed by the program contractor and the Director.
- B.** Whenever the Administration issues formal contract extensions or modifications to be signed by the program contractor in non-mandated counties, the provisions of such extensions or modifications shall be deemed to have been accepted 60 days from the date of mailing by the Administration, even if the extensions or modifications have not been signed by the program contractor. If, within the 60 days, the program contractor notifies the Administration in writing that it refuses to sign the extension or modification, the Administration may initiate contract termination proceedings.
- C.** For mandated counties and state agencies, when AHCCCS issues an amendment to extend or modify this contract, the provisions of such amendment shall be deemed to have been accepted 60 days from the date of mailing by AHCCCS, even if the amendment has not been signed by the mandated program contractor, unless within that time it notifies AHCCCS in writing that it refuses to sign the amendment. Any disagree-

ment between the parties regarding the terms of the amendment will be considered a dispute and administered in accordance with 9 A.A.C. 28, Article 8.

R9-28-607. Contract Sanctions

- A.** General. Grounds for suspension, denial, refusal, or failing to failure to renew, or terminating of contract or subcontract or imposing of monetary sanctions shall include, but not be limited to, the reasons listed below:
1. Submitting any misleading, false or fraudulent information when submitting claims for payment;
 2. Submitting false information for the purpose of obtaining greater compensation than that to which the program contractor or provider is legally entitled;
 3. Submitting inaccurate or incomplete representations in the bidding process;
 4. Failing to disclose or make available to the Administration, or its authorized representatives, records of services provided to eligible persons or members and records of payment made thereafter;
 5. Submitting false information for the purpose of obtaining authorization for the provision of services requiring such authorization;
 6. ~~Over-providing services or delivering Over-provision of services or the delivery of unnecessary services by inducing or otherwise causing an eligible person or member to receive services or items not required by such person or member or by directly furnishing such services or items;~~
 7. ~~Providing Provision of any services in violation of or not authorized by or otherwise precluded by licensure, certification or other law;~~
 8. ~~Breaching Breach of the terms or conditions of a contract;~~
 9. ~~Having a member A felony conviction of any member of the board, administrator, managers, or participating physician of a program contractor, convicted of a felony;~~
 10. Giving or accepting a rebate, kickback, or fee, or portion of a fee, or charge for referral of an eligible person or member referral;
 11. ~~Violating Violation of any of the provisions of A.R.S. Title 36, Chapter 29; Title XIX of the Social Security Act, as amended; or any state or federal rule promulgated thereunder;~~
 12. ~~Demonstrating Demonstration of an inability to perform obligations under a program contractor agreement by prior conduct; conduct, including substance abuse.~~
 13. ~~Being determined Determination of a substantial breach of a previous or existing contract agreement with other state agencies;~~
 14. ~~Determining Determination that a program contractor has previously been found ineligible to participate in a federal or state assembled medical program by the Administration or any other state or federal governmental agency;~~
 15. Failing to reimburse providers subcontracting and non-contracting providers for medically necessary institutional and HCBS home and community-based services within 30 days of the receipt of valid, clean claims, unless a different period is specified by contract, or failing to ensure that future claims will be timely paid;
 16. Failing to reimburse providers subcontracting and non-contracting providers utilized by referral for the provision of medically necessary acute health care services to their members within 60 days of receipt of valid, clean claims, unless a different period is specified by contract, or failing to ensure that future claims will be timely paid;
 17. Failing to reimburse noncontracting providers for the provision of emergency medical services provided to the program contractor's members within 60 days of receipt

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- of valid, clean claims, or failing to ensure that future claims will be timely paid;
18. ~~Failing to Failure to provide and maintain quality health care service to eligible persons and members, as determined by standards established by state and federal statutes or rules;~~
 19. ~~Being determined to be endangering or to have endangered, either by omission or commission, the health, safety, or well-being of an eligible person or member. Substantiation that the program contractor, either by omission or commission, is endangering or has endangered the health, safety or well-being of an eligible person or member.~~
 20. ~~Upon the program contractor Becoming becoming insolvent, or filing proceedings in bankruptcy or reorganization under the United States Code, or assigning rights or obligations under the contract without the prior written consent of the Administration;~~
 21. ~~Failing or refusing Failure or refusal of the program contractor to comply with the reporting or disclosure requirements; of 42 CFR 455, Subpart B, incorporated by reference herein and on file with the Office of the Secretary of State.~~
 22. ~~Being determined to have committed Substantiation of fraud or abuse by a program contractor or provider; subcontractor in accordance with 42 CFR 455(2) and 42 CFR 1002.203, incorporated by reference herein and on file with the Office of the Secretary of State.~~
 23. ~~Being convicted Conviction of a criminal offense related to involvement in any program under Medicare, Medicaid, or Title XX of the Social Security Act of any person who has an ownership or controlling control interest in the program contractor or provider subcontractor, or is an agent or managing employee of the program contractor or provider; subcontractor.~~
 24. ~~Failing to Failure to conform to and abide by the applicable laws or rules of the State of Arizona, the United States Federal Government and the Administration;~~
 25. ~~Failing to Failure to comply with the approved utilization review plan;~~
 26. ~~Suspending or evoking Suspension or revocation of a professional physician provider's license by the Arizona Board of Medical Examiners.~~
- B. Monetary sanctions. The imposition of monetary sanctions is as follows:
1. Except as provided in subsection (C), withholding a percentage of the program contractor's capitation prepayment, commensurate with the nature, term, and severity of the violation; but not to exceed \$5,000.00 per violation;
 2. Written notice shall be provided program contractors specifying the monetary sanction, grounds for such sanction, and either the length of suspension or the amount of prepayment to be withheld; and
 3. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions provided for by contract.
- ~~C.4. If a program contractor provides inappropriate services to an eligible person or member, an amount equal to the cost of services will be withheld from a program contractor's capitation payment. The Administration shall withhold or forfeit capitation payments to the program contractor if the program contractor provides inappropriate services to an eligible person in an amount which equals the cost of the inappropriate services.~~
- ~~D.C. Modification and termination of the contract without cause. Termination or suspension of the contract in whole or in part without cause shall be effective 30 days after mailing written notice of termination or suspension by certified mail, return receipt requested, to the program contractor.~~
- ~~E.D. The Administration shall apply remedies for nursing facilities that do not meet requirements of participation in accordance with Section 1919(h) of the Social Security Act, effective December 19, 1989, and 42 CFR 488, Subpart (F), July 1, 1995, and the State Plan under Title XIX of the Social Security Act, Medical Assistance Program, page 79c, April 1, 1992, Attachment 4.35-A, January 1, 1991, and Attachment 4.35-B, April 1, 1992, which are incorporated by reference herein and on file with the Administration and the Office of the Secretary of State. These incorporations by reference contain no future editions or amendments.~~
- ~~E.E. Notification. The Director shall provide written notice of intent to suspend, deny, fail to renew, or terminate a contract or subcontract. Such notice shall be provided to affected principals, enrolled members, and other interested parties and shall include the effective date of, and reason for, such action.~~
- ~~G. Preadmission screening contractors. The Director may suspend, deny, refuse or fail to renew or terminate a contract if the preadmission screening contractor fails to meet the provisions of its contract.~~
- ### ARTICLE 7. STANDARDS FOR PAYMENTS
- R9-28-702. Prohibition Against Charges to Members or Eligible Persons** ~~Prohibition against charges to members or eligible persons~~
- A. No program contractor, provider, or noncontracting provider shall charge, submit a claim, demand, or otherwise collect payment from a member or eligible person acting on behalf of a member or eligible person for any covered service other than for a member's or eligible person's patient's share of cost, authorized copayments, co-payments or payment for noncovered services. Program contractors shall have the right to recover from a member that portion of payment made by a 3rd third party to the member when such payment duplicates ALTCS paid benefits.
 - B. Program contractors, providers, and noncontracting providers shall not bill or make any attempt to collect payment, directly or through a collection agency, from an-a individual person claiming to be ALTCS eligible without first receiving verification from the Administration that the individual person was ineligible for ALTCS on the date of services, or that services provided were not covered by ALTCS.
 - C. A program contractor, provider or noncontracting provider may bill an eligible person or member for medical expenses incurred during a period of time when the individual willfully withheld material information pertaining to his ALTCS eligibility or enrollment.
- R9-28-703. Claims**
- A. Program contractors. All claims for services rendered to members enrolled with a prepaid program contractor shall be submitted to such program contractor.
 - B. Providers and noncontracting providers. All claims for covered services rendered to eligible but not enrolled persons by providers or noncontracting providers shall be submitted to the Administration for payment in accordance with A.A.C. R9-22-703 and this Article.
 1. Claims for covered services provided to members or eligible persons ALTCS eligible individuals by program contractors, providers, or noncontracting providers shall be initially received by the Administration not later than 9

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nine months after the last date of service shown on the claim. Additionally, a claim shall not be considered for payment unless it is received by the Administration as a clean claim not later than 12 months after the last date of service shown originally on the claim.

2. Reinsurance claims shall be submitted in accordance with R9-22-703.
- 2.3. For the purpose of determining the date of receipt of a claim, the date of receipt is the date the Administration receives the claim. Only claims received by the Administration in accordance with the provisions of this Section shall be considered for payment.

R9-28-704. Transfer of Payments ~~Transfer of payments~~

- A. Payments permitted. When in the best interests of the state, payments shall be made to other than the program contractor, provider or noncontracting provider as listed below:
 1. When payment is made in accordance with an assignment to a government agency or an assignment made pursuant to a court order; or
 2. When payment is made to a business agent, such as a billing service or accounting firm, or renders statements and receives payment in the name of the program contractor, noncontracting provider or provider, providing that the agent's compensation for this service is:
 - a. Reasonably related to the cost of processing the statements, and
 - b. Not dependent upon the actual collection of payment.
- B. When in the best interests of the state, payment to primary care providers, physicians, dentists, or other health professionals shall be made as follows:
 1. To the employer of the primary care provider, physician, dentist, or other health professional, if such individual person is required, as a condition of employment, to turn over fees to his or her employer;
 2. To a foundation, plan consortium or other similar organization, including a health care service organization, which furnishes health care through an organized health care delivery system, if there is a contractual arrangement between the organization and the individual person furnishing the services under which the organization bills or receives payment for such services.
- C. Payments prohibited. Program contractors, providers or noncontracting providers are prohibited from assigning all or part of ALTCS payments for covered services furnished to a member or eligible person to any party other than the program provider contractor, provider or noncontracting provider except as specified in this Section.
- D. Prohibition of payments to factors. Payment for covered services furnished to a member or eligible person by a program contractor, provider or noncontracting provider shall not be made to, or through a factor, either directly, or by virtue of a power of attorney given to the factor.

R9-28-706. Payments by the Administration for Services Provided to Eligible Persons

- A. Payment for medically necessary outpatient services.
 1. Medically necessary services provided to eligible persons from the effective date of eligibility to the date of enrollment with a program contractor shall be paid at the negotiated rate, capped fee-for-service rate or billed charges, whichever is lower.
 2. Eligible persons residing in areas that are not served by ALTCS program contractors shall be eligible for ALTCS covered services. Payment for medically necessary services provided to such individuals shall be made at the

negotiated rate, capped fee-for-service rate or billed charges, whichever is lower.

3. Medically necessary services provided to eligible persons by out-of-state providers shall be paid at the capped fee-for-service rate pursuant to R9-28-708 or the Medicaid rate that is in effect at the time services are provided in the state in which the provider is located, whichever is lower.
- B. Payment for covered hospital services provided to eligible persons on or after March 1, 1993, shall be made in accordance with A.A.C. R9-22-712.
- B. Payment for covered hospital services provided to ALTCS eligible persons on or after October 1, 1988, until January 1, 1991.
 1. Hospital inpatient, outpatient and emergency services provided to ALTCS eligible persons by out-of-state hospitals will be paid at negotiated discounted rates, 80% of billed charges or the Medicaid rate that is in effect at the time services are provided in the state in which the hospital is located, whichever is lowest.
 2. Except as provided in subsection (C), payment of hospital inpatient services provided to ALTCS eligible persons by in-state, nonfederal hospitals will be based on the adjusted billed charge factor in effect for that hospital at the time services are rendered.
 3. The date for purposes of determining the timeliness discount of adjusted billed charges that will be paid is the date the claim is determined to be clean by the Administration. The Administration shall not pay a hospital's adjusted billed charges in excess of the following:
 - a. If the hospital's bill is paid within 30 days of the date of the receipt of a clean claim, 85% of the adjusted billed charges.
 - b. If the hospital's bill is paid any time after 30 days through 60 days of the date the bill was received, 95% of the adjusted billed charges.
 - c. If the hospital's bill is paid any time after 60 days of the date the bill was received, 100% of the adjusted billed charges.
 4. The date of receipt of hospital claims is the date the claim was received by the Administration as indicated by the date stamp on the claim and the claim reference number. Hospital claims shall be considered paid on the date indicated on disbursement checks. Denied claims shall be considered adjudicated on the date of their denial. Claims that are rejected or require additional supporting documentation from hospitals shall receive new date stamps. Only valid clean claims that are submitted in accordance with ALTCS rules and represent charges for the provision of hospital services to individuals who have been determined ALTCS eligible will be processed.
 5. Payments pursuant to paragraphs (2) and (3) of this subsection shall not exceed the schedule of rates and charges that hospitals had in effect, as filed with the Department of Health Services, as of the date of service.
- C. Payment for covered hospital services provided to eligible persons on or after January 1, 1991, until March 1, 1993.
 1. Hospital inpatient, outpatient and emergency services provided to eligible persons by out-of-state hospitals shall be paid at negotiated discounted rates, 80% of allowed billed charges or the Medicaid rate that is in effect at the time services are provided in the state in which the hospital is located.
 2. Payment of hospital inpatient, outpatient and emergency services provided to eligible persons by in-state, nonfederal hospitals shall be based on the reimbursement level

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in effect on December 31, 1990, increased by 2 1/2%, and according to the requirements set forth in paragraphs (B) (3) through (5).

3. ~~Payment of hospital inpatient services under this subsection shall continue for all admissions prior to March 1, 1993, including such admissions with discharge dates on or after March 1, 1993.~~

D.C. Limitation on payment for hospital services. The Administration may limit payment for hospital services for lower or alternative levels of care, that is, services furnished to hospital inpatients who require a lower covered level of care, such as skilled nursing facility or intermediate care services, when the Director or his designee determines such less costly alternatives could and should have been utilized by a hospital.

R9-28-707. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care Program Contractor's Liability to Noncontracting Providers

- A. For purposes of program contractor liability, an emergency medical or acute mental health condition shall be subject to reimbursement only until such time as the member's patient's condition is stabilized and the member-patient is transferable, or until the member patient is discharged following stabilization subject to the requirements of A.R.S. § 36-2909(B) and Article 2 of this Chapter.
- B. Subject to subsection (A), in the event that a member cannot be transferred to a facility which has a subcontract with the program contractor following stabilization, the program contractor shall pay for all appropriately documented medically necessary treatment, prior authorized in accordance with A.A.C. R9-22-705, provided such member prior to date of discharge or transfer in accordance with payment standards in A.A.C. R9-22-705.
- C. In the event that a member refuses transfer from a noncontracting provider institution to an institution affiliated with the member's program contractor, neither the Administration nor the program contractor shall be liable for any costs incurred subsequent to the date of refusal when:
 1. Subsequent to consultation with his program contractor, the member continues to refuse the transfer; and
 2. The member has been provided and signs a written statement, prior to the date of transfer of liability, informing the member him of the medical and financial consequences of such refusal. If the member refuses to sign a written statement, then a statement signed by 2 witnesses indicating that the member was informed may be substituted.

R9-28-709. Reinsurance

- A. Program contractor acquired reinsurance. A program contractor may obtain reinsurance for coverage of services provided to capitated members enrolled with it. A program contractor shall not obtain reinsurance to reduce liability below 25% of the applicable reinsurance level during any ALTCS contract year. This limitation shall not apply to reinsurance obtained by a program contractor to cover the cost of services provided by noncontracting providers to members under emergency circumstances.
- B. Administration reinsurance. For purposes of the Administration's reinsurance program, the insured entity shall be a program contractor.
 1. Reimbursement of covered services shall be subject to a deductible as specified in contract. The deductible shall be reset at the beginning of each contract year and when a member changes program contractors. Allowable costs in excess of the deductible amount shall have a reinsurance percentage as specified in contract applied to calculate

the reimbursement amount. Medicare and other 3rd-party payments shall be deducted from allowable costs prior to calculating the reimbursement amount.

2. Acute inpatient and psychiatric facility services provided while the member was enrolled with the program contractor are covered services for purposes of reinsurance reimbursement.
3. Services reimbursed under the reinsurance benefit are subject to medical review by the Administration. Reimbursement may be denied, payment levels reduced, or financial sanctions imposed upon the program contractor when medical review results in identification of services which could have been provided in a less costly, medically appropriate manner. Medical review and resulting adjustments to reimbursement shall be in accordance with contract.
4. Inpatient encounter data submitted by the program contractor shall be used by the Administration to identify reinsurance cases which exceed the deductible amounts and which are subject to reimbursement.
5. The program contractor shall make available to the Administration upon request documentation:
 - a. To support the services provided.
 - b. The reimbursement for those services, and
 - c. Attempts to recover the cost of those services from other payors.
6. The Administration may require contractual terms that prescribe special reinsurance requirements for catastrophic cases. Such requirements may include:
 - a. Conditions under which a case shall be considered catastrophic.
 - b. Claim and documentation requirements, and
 - c. The method and amount of reimbursement for such cases.
1. Medical services costs qualifying for reinsurance shall have been incurred during the contract year or such part of that year in which the individual member is enrolled with the contractor. Any movement of a member from membership with one program contractor to membership with another program contractor shall be cause for the resetting of the deductible level.
2. The program contractor shall notify the Administration when an individual member's incurred costs for inpatient, emergency and certain outpatient services, as prescribed in subsection (C), reach 60% of the applicable deductible level.
- C. Coinurance and deductible levels for eligible members.
 1. Coinurance. As set forth in contract, the Administration shall pay the percentage of costs in excess of the applicable deductible level incurred in the provision of, or payment for, covered inpatient, emergency and certain outpatient services approved by the Director pursuant to A.R.S. § 36-2906.(D). These include dialysis services not covered by Title XVIII, total parenteral nutrition, and other ambulatory services.
 2. Deductible. The program contractor is responsible for payment of the deductible.
- D. Costs in excess of the deductible level shall be paid based upon charges adjudicated or paid by the program contractor, or the ALTCS fee schedule, whichever is less, minus the applicable coinurance and third party reimbursements.
 1. The contractor shall provide evidence that costs incurred have been adjudicated or paid by the program contractor prior to submitting reinsurance claims.
 2. Third party collections shall reduce the reinsurance claim on a dollar for dollar basis.

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3. ~~Payments made for program contractor purchased reinsurance are not considered third party collections for the purpose of Administration reinsurance.~~
- E. ~~Claims submission. A program contractor shall be responsible for the preparation, review, verification, certification and submission of reinsurance claims to the Administration.~~
 1. ~~The program contractor shall certify the validity of services rendered and that the services were medically necessary and within the scope of ALTCS benefits.~~
 2. ~~The program contractor shall submit reinsurance claims on forms prescribed by the Administration.~~
 3. ~~The program contractor shall initiate and adjudicate all claims for probable third party liability prior to submitting a reinsurance claim to the Administration, except for claims involving liability of underinsured or uninsured motorist insurance, third party liability insurance and tort-feasors.~~
 4. ~~The program contractor shall submit all claims not later than nine months after the close of the contract year in which the service is rendered.~~
- E. ~~Claims processing. The Administration shall be responsible for processing the Administration reinsurance claims submitted by the program contractor.~~
 1. ~~The Administration shall accept for processing only those claims which are submitted directly by an ALTCS program contractor and which comply with the conditions set forth in subsections (B), (C), (D), and (E) of this Section.~~
 2. ~~The Administration shall establish and maintain separate records of all reinsurance claims submitted and reviewed, and of all payments made to the contractor as a result of such claims.~~
 3. ~~Program contractors shall be subject to utilization and other evaluative reviews by the Administration of care provided to a member which results in a reinsurance claim.~~
- G. ~~Payment of claims. The Administration shall reimburse the program contractor for costs incurred in excess of the applicable deductible level calculated according to the provisions of subsection (D), of this Section.~~
- H. ~~The Administration may limit reinsurance reimbursement to reimbursement for lower or alternative levels of care when the Director or his designee determines such less costly alternatives could and should have been utilized by a program contractor. A program contractor whose claims are reduced or denied shall be notified in writing by the Administration. Such notification shall include the cause for reduction or denial and describe the applicable appeal process pursuant to Article 8 of this Chapter.~~
- I. ~~The Administration may require contractual terms that prescribe special reinsurance requirements for catastrophic cases. The determination of whether a case or type of case is catastrophic shall be made by the Director based on the following criteria:~~
 1. ~~Severity of medical condition, including prognosis;~~
 2. ~~Average length of hospitalization and medical care in Arizona for the type of case under consideration;~~
 3. ~~Average cost of hospitalization and medical care in Arizona for the type of case under consideration.~~

R9-28-710. Capitation Payments to Program Contractors
Capitated payments to program contractors

- A. All payments to program contractors shall be made pursuant to the terms and conditions of contracts executed between the program contractor and the Administration and in accordance with this Chapter.

- B. Capitation shall be paid monthly to those program contractors who have either posted required performance bonds or have otherwise provided security to the Director.
- C. Program contractors for the elderly and physically disabled shall be paid a capitated amount per member enrolled individual per month. Administrative costs shall be incorporated into the capitation payment amount.
- D. Program contractors shall be paid on a fee-for-service basis for approved services rendered to ventilator dependent individuals.

R9-28-711. Payments Made on Behalf of a Program Contractor; Recovery of Funds; Postpayment Reviews

- A. The Administration may make payments on behalf of a program contractor and may recover funds from a program contractor or subcontracting provider in accordance with standards set forth in A.A.C. R9-22-713. For purposes of this Section, the term "contractor" as it appears in A.A.C. R9-22-713 shall mean "program contractor".
- B. The Administration shall conduct postpayment reviews of claims paid by the Administration and shall recoup any monies erroneously paid. Program contractors may conduct postpayment reviews of claims paid by program contractors and may recoup any monies erroneously paid.

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS

R9-28-801. General Provisions for All Grievances and Appeals

All grievances and appeals regarding ALTCS shall be filed and processed in accordance with A.A.C. R9-22-801, and all references in that rule to AHCCCS also shall apply to ALTCS. In eligibility appeals, ALTCS is the respondent.

R9-28-801, R9-28-802. Eligibility Appeals and Hearing Requests for Applicants, Eligible Person, and Member Eligibility Appeals and Hearing Requests for Applicant or Recipients of ALTCS Services

- A. ~~Individuals affected by adverse eligibility actions~~ Adverse eligibility actions. An applicant, eligible person, or member receiving state-funded ALTCS services may appeal and request a hearing concerning any of the following adverse eligibility actions:
 1. Denial of eligibility;
 2. Discontinuance of eligibility;
 3. Delay in the eligibility determination;
 4. Adverse preadmission screening decision;
 5. Adverse post eligibility treatment of income; or
 6. Adverse disability determination.
- B. Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action notice of action shall be the date of personal delivery to the individual or the date of mailing the postmark date, if mailed.
- C. ~~Computation of time. In computing any period of time for establishing timeliness of filing grievances and appeals allowed by this Article, the day of the act, event or decision from which the designation of time begins to run shall not be included. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.~~
- ~~D.C.~~ Appeals and requests for hearing. Eligibility appeals and hearing request process:
 1. The applicant, eligible person, member, or an authorized representative may appeal and request a hearing from

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regarding any adverse eligibility action by completing and submitting the AHCCCS ALTCS Request for Hearing form or by submitting a written request containing the following information:

- a. The case name.
 - b. The adverse eligibility action being appealed, and
 - c. The reason for appeal.
2. The request for hearing shall be submitted within 20 days of the notice of denial or 10 days after the effective date of the action for all other adverse actions by mailing or delivering it to either the eligibility office which rendered the adverse decision or directly to the Administration, Office of Grievance and Appeals. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery, as described in Paragraph 4, of this subsection not later than 20 days after the date of the Notice of Action for denials and not later than ten days after the effective date of the action for all other adverse actions.
2. The request for hearing form or the written request shall be submitted to either the eligibility office which rendered the adverse eligibility action or directly to the AHCCCS Administration, Office of Grievance and Appeals. If the Request for Hearing is submitted by mail, the date of request shall be the postmarked date. If the Request for Hearing is submitted in person, the date of request shall be the date on which the request is submitted to the eligibility office or the AHCCCS Administration, Office of Grievance and Appeals.
- 3.D. Eligibility office responsibilities.**
1. Eligibility offices shall maintain a register which documents the dates on which Requests for Hearings are submitted. Each Request for Hearing form shall indicate the date of request as described in paragraph (2).
 4. If the appellant or authorized representative does not utilize the request for hearing form, he shall provide the following information on a written hearing request:
 - a. The case name;
 - b. Adverse eligibility decision being appealed; and
 - c. Reason for appeal.
 - 2.5. If requested, the eligibility office shall assist the appellant or authorized representative in the completion of the Request for Hearing form.
 3. The prehearing summary shall be completed by the eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.
 - 6.4. The eligibility office shall send to the AHCCCS Administration, Office of Grievance and Appeals:
 - a. The the prehearing summary; Pre-Hearing Summary,
 - b. A copy of the case file; ,
 - c. Documents documents pertinent to the adverse action; , and
 - d. The request for hearing the Request for Hearing form or written request which must be received by the AHCCCS Administration, Office of Grievance and Appeals, not later than ten 10 days after from the date of the receipt of the request. In the event that the appeal If the request is submitted directly to the AHCCCS Administration, Office of Grievance and Appeals, the eligibility office shall send the Pre-Hearing Summary, a copy of the case file, and documents pertinent to the adverse action, which shall be received by the AHCCCS Administration, materials to the Office of Grievance and Appeals, not later

than ten 10 days from the date of a request for such materials by the Administration.

7. The prehearing summary shall be completed by the eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.
- E. Withdrawal and denial of the hearing request:**
1. The AHCCCS Hearing Officer or designee shall deny a Request for Hearing and deny the appeal if a written request for withdrawal is received from the appellant prior to the scheduled date of the hearing. The grievance file then shall be closed.
 2. The AHCCCS Hearing Officer or designee may deny an appeal and Request for Hearing if:
 - a. The date of request is subsequent to the timeframes specified in subsection (C);
 - b. The appeal and request for hearing is for a reason other than those identified in subsection (A); or,
 - c. The appellant's appeal rights have been waived.
- E. Postponement:**
1. The Chief Hearing Officer or designee on motion may postpone a hearing. When the request for postponement is made, it shall be made in writing and received by the AHCCCS Administration, Office of Grievance and Appeals, no later than five days, excluding Saturdays, Sundays and legal holidays, prior to the scheduled hearing date. The AHCCCS Chief Hearing Officer or designee shall grant a request for postponement on a showing that:
 - a. There is substantial cause for the postponement, and
 - b. The cause is beyond the reasonable control of the party.
 2. If a postponement is granted, the hearing shall be rescheduled at the earliest practicable date.
- G. Notice of Hearing.** The notice of hearing shall be in accordance with A.R.S. § 41-1061 and shall include the following information:
1. A statement asserting the appellant's financial liability if ALTCS benefits are continued and a proposed discontinuance is upheld by the Director; and,
 2. A statement detailing how an appellant may request a change in the scheduled hearing date.
- H. Failure to appear for hearing.** Should the appellant or the appellant's representative fail to appear at the hearing without good cause or a postponement, the AHCCCS Chief Hearing Officer or designee may:
1. Proceed with the hearing;
 2. Reschedule the hearing with further notice on his own motion;
 3. Issue a decision based on the evidence of record; or
 4. Issue a default disposition.
- E. I. ALTCS coverage during the appeal process, process:**
1. Individuals Eligible person or member appealing a discontinuance, discontinuance: A discontinuance is a termination of ALTCS benefits. For actions requiring a ten 10 day days' advance notice, individuals eligible persons or members requesting a hearing before the effective date of the adverse action shall receive continued ALTCS benefits until an adverse decision on appeal is rendered. Appellants whose benefits are continued shall be financially liable for all ALTCS benefits received during a period of ineligibility if the discontinuance decision is upheld by the AHCCCS Director.
 2. Individuals Applicants appealing a denial of ALTCS coverage:

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- a. A denial is an adverse eligibility decision or adverse preadmission screening decision which finds the applicant ineligible for ALTCS benefits.
 - b. Individuals Applicants may appeal this denial within the time frames specified in subsection (C)(2) D. In the event that the denial is overturned, the effective date of ALTCS coverage shall be established by the Director in accordance with applicable law.
 - 3. ~~Eligible persons or members whose benefits have been continued may be financially liable for all ALTCS benefits received during a period of ineligibility if a discontinuance decision is upheld by the director.~~
 - F. ~~The AHCCCS Chief Hearing Officer or designee may deny a request for hearing if the sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants, eligible persons or members.~~
 - J. ~~Appellant's hearing rights:~~
 - 1. ~~Each appellant shall be afforded those hearing rights specified in A.R.S. §§ 41-1061 and 41-1062.~~
 - 2. ~~Each appellant has the right to obtain copies of any relevant documents from the case record at the appellant's expense.~~
 - 3. ~~Each appellant has the right to appear at the hearing and be heard in person, by telephone if available, through a representative designated in writing by the appellant, or to submit to the Administration a written statement that is signed and notarized prior to the hearing.~~
 - 4. ~~Each appellant has the right to bring an interpreter to assist at the hearing.~~
 - 5. ~~Persons who do not speak English or are deaf or mute according to A.R.S. § 12-242 shall be provided an interpreter by the Administration if the Administration is notified at least ten days in advance of the hearing.~~
 - K. ~~Conduct of hearing. The hearing shall be conducted pursuant to A.R.S. §§ 41-1061 and 41-1062.~~
 - L. ~~AHCCCS Hearing Officer's decision:~~
 - 1. ~~Except as provided in paragraph (2) of this subsection, after the conclusion of the hearing, the AHCCCS hearing officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.~~
 - 2. ~~Under the following circumstances the AHCCCS Chief Hearing Officer or designee shall issue a final disposition in a case without a hearing by:~~
 - a. ~~Default order, when the appellant or the appellant's representative fails to appear at the hearing without good cause. Upon application by appellant of good cause shown, the case may be reopened; or~~
 - b. ~~Disposition order when the appellant withdraws his appeal or there is a stipulated agreement to the disposition; or~~
 - c. ~~Dismissal order when the appeal was not timely filed.~~
 - M. ~~Decision of the Director.~~
 - 1. ~~After receipt of the hearing officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law, and unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. If a discontinuance or denial is upheld, the decision shall also state that the appellant may reapply for ALTCS benefits. The decision shall notify any party adversely affected of the right to request rehearing or review.~~
 - 2. ~~As part of his decision, the Director may remand the case for eligibility decision.~~
 - 3. ~~Except as provided in subsection (N), the Director's decision made pursuant to this subsection shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq. and subsection (N).~~
 - N. ~~Request for rehearing or review:~~
 - 1. ~~Unless the Director determines in his decision that good cause exists otherwise, a party dissatisfied with the decision may petition the Director for a rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:~~
 - a. ~~Irregularity in the proceedings of the hearing or appeal whereby the dissatisfied party was deprived of a fair hearing or appeal;~~
 - b. ~~Misconduct of a party or the agency;~~
 - c. ~~Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;~~
 - d. ~~That the decision is the result of passion or prejudice; or~~
 - e. ~~That the decision is not justified by the evidence or is contrary to law.~~
 - 2. ~~The Director may remand the case for eligibility decision, open the decision, order the taking of additional testimony or evidence before the hearing officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.~~
 - 3. ~~The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.~~
 - 4. ~~A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the party or the postmark date, whichever occurs first. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12-901 et seq.~~
 - O. ~~Failure to submit a grievance or appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.~~
- R9-28-802 R9-28-803 Member Grievances**
All grievances regarding ALTCS shall be filed and processed in accordance with A.A.C. R9-22-804, and all references in that rule to AHCCCS also shall apply to ALTCS.
- A. ~~A member aggrieved by any adverse decision or action by a program contractor, subcontractor, noncontracting provider, nonprovider, or the Administration may file a grievance and request a hearing as specified in this Section. This Section shall not apply to actions or decisions affecting a member's eligibility.~~
 - B. ~~Member grievances to program contractor:~~
 - 1. ~~All grievances filed by member relating to the program contractor, subcontractor, noncontracting provider, or nonprovider shall be filed with the member's program contractor for review, investigation and resolution in accordance with the grievance requirements of this subsection and the applicable contract.~~
 - 2. ~~All grievances shall be filed orally or in writing with the member's program contractor not later than 35 days after the date of such adverse decision or action. Grievances~~

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filed pursuant to this subsection shall state with particularity the factual and legal basis and the relief requested.

3. The program contractor shall record and retain sufficient information to identify the grievant, date of receipt and nature of the grievance.
4. A final decision shall be rendered by the program contractor on all grievances within 30 days of filing. A copy of the decision by the program contractor shall be personally delivered or mailed by certified mail to the member and by regular mail to all other parties and shall state the basis for the decision as well as the individual's right to appeal the decision to the Administration. The program contractor's decision shall specify the manner in which an appeal to the Administration may be filed.
5. At the time of enrollment, each member shall be given information explaining grievance procedures available through the program contractor and through the Administration.
6. This Section shall not apply to actions or decisions affecting a member's eligibility, preadmission screening decisions, or to actions or decisions that reduce a categorically eligible member's benefits as a result of changes in state or federal law.

C. Member's grievance or appeal to Administration:

1. Member may appeal to and request a hearing from the AHCCCS Administration, Office of Grievance and Appeals, if:
 - a. The member files a written notice of appeal not more than 15 days after the date of the final decision of the program contractor. The date of the final decision shall be the date of personal delivery to the member or the postmark date of the certified mailing, whichever occurred first.
 - b. In the event that a decision was not timely rendered by the program contractor in accordance with the provisions of this Section, the member files a written notice of appeal based upon the program contractor's failure or refusal to timely decide the grievance.
 - c. The member has a grievance against the Administration and files a grievance not more than 35 days after the date of adverse decision or action by the Administration. Grievances filed pursuant to this subsection shall state with particularity the factual and legal basis therefor, and the relief requested.
2. If the Grievance and Appeal Division is unable to resolve the appeal to the appellant's satisfaction, a hearing shall be scheduled.
3. The Administration, in its sole discretion, may investigate the grievance and render a written decision prior to scheduling a hearing. A hearing shall be scheduled in the event the Administration elects not to investigate the grievance or upon the request for a hearing by any grievant subsequent to any such investigative decision by the Administration.

D. AHCCCS Hearing Officer decision:

1. The hearing shall be conducted before an AHCCCS Hearing Officer designated by the Director and held in accordance with A.R.S. §§ 41-1061 and 41-1062.
2. After the conclusion of the hearing, the AHCCCS hearing officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.

E. Decision of the Director:

1. After receipt of the hearing officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of

law, and unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. The decision shall notify any party adversely affected of the right to request rehearing or review.

2. Except as provided in subsection (F), the Director's decision made pursuant to this subsection shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq. and subsection (F). Such a decision is not subject to judicial review unless the Director makes the finding provided for in subsection (F).

E. Request for Rehearing or Review:

1. Unless the Director determines in the decision that good cause exists otherwise, a party may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:
 - a. Irregularity in the proceedings of the hearing or appeal whereby the dissatisfied party was deprived of a fair hearing or appeal;
 - b. Misconduct of a party, the county or the agency;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.
2. The Director may open the decision, order the taking of additional testimony or evidence before the hearing officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.
3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the member or the postmark date, whichever occurs first. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing.

- G. Failure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking a judicial relief.**

R9-28-803. Nonmember Grievances

- A.** An eligible but non-enrolled individual may file a written or oral grievance with the AHCCCS Administration, Office of Grievance and Appeals.
- B.** The written grievance shall be filed with and received by the Administration not later than 35 days after the date of adverse decision or action being grieved.
- C.** If the Grievance and Appeal Division is unable to resolve the grievance to the grievant's satisfaction, a hearing shall be conducted and decision rendered, in accordance with the applicable provisions of R9-28-802.
- D.** Grievances that involve issues related to continuity or delivery of medical services shall be resolved as expeditiously as practicable considering the medical needs presented by the grievant.

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- E. Failure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.
- E. This Section shall not apply to actions or decisions affecting an individual's eligibility or preadmission screening, or to actions or decisions that reduce a categorically eligible individual's benefits as a result of changes in state or federal law.

R9.28.804. Program Contractor, Provider, Noncontracting Provider, Nonprovider and County Grievances

- A. The provisions of this Section provide the exclusive manner through which program contractors, providers, noncontracting providers, nonproviders and counties may grieve against the Administration and program contractors in connection with any adverse action, decision or policy.

B. Grievances against program contractor.

1. All grievances by counties, providers, noncontracting providers and nonproviders relating to an adverse decision or action by a program contractor shall be filed with the program contractor for review, investigation and resolution in accordance with the grievance requirements of this subsection and any applicable contract.
2. All grievances, excluding those challenging claim denials, shall be filed in writing with the program contractor not later than 35 days after the date of such adverse decision or action. All grievances challenging claim details shall be filed in writing with the program contractor not later than 12 months from the date of the service for which payment is claimed. The grievance shall state with particularity the factual and legal basis, and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.
3. The program contractor shall record and retain sufficient information to identify the grievant, date of receipt and nature of the grievance.
4. A final decision shall be rendered by the program contractor within 30 days of filing, unless the parties agree to a longer period of time. A copy of the decision of the program contractor shall be personally delivered or mailed by certified mail to the grievant and by regular mail to all other parties and shall state the basis for the decision, as well as the party's right to appeal the decision to the Administration. The program contractor's decision shall specify the manner in which an appeal to the Administration may be filed.

C. Grievances to the Administration.

1. Program contractors, counties, providers, noncontracting providers and nonproviders may grieve to the AHCCCS Administration, Office of Grievance and Appeals, if:
 - a. The county, provider, noncontracting provider or nonprovider files a written notice of appeal with the Administration not more than 15 days after the decision of the program contractor rendered pursuant to subsection (B). The date of the final decision shall be the date of personal delivery or the postmarked date of certified mailing, whichever occurred first.
 - b. A decision was not timely rendered by the program contractor in accordance with subsection (B) and the county, provider, noncontracting provider or nonprovider files a written notice of appeal based upon the program contractor's failure or refusal to timely decide the grievance.
 - c. The program contractor, county, provider, noncontracting provider or nonprovider has a grievance against the Administration and files a grievance not more than 35 days after the date of adverse action, decision or policy implementation by the Adminis-

tration; provided, however, any grievances challenging claim denials by the Administration shall be filed not more than 12 months after the date of the service for which payment is claimed. Any grievances challenging reinsurance claim denials by the Administration must be filed not more than 12 months after the close of the contract year in which the claim was incurred. If the claim is denied less than 35 days prior to the expiration of the 12 month time period, the dissatisfied party shall have 35 days from the date of the denial to file a grievance. Grievances filed pursuant to this subsection shall be in writing and state with particularity the factual and legal basis therefor, and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.

2. The Administration, in its sole discretion, may investigate the grievance and render a written decision regarding the grievance or schedule the grievance for a hearing in accordance with the provisions of this Section.

D. Appeals. A party may appeal the Administration's grievance decision by filing a request for hearing with the Director. The request for hearing shall be filed not later than 15 days after the date of the Administration's grievance decision. The date of the grievance decision shall be the date of personal delivery to the grievant or the postmark date, whichever occurs first.

1. The hearing shall be conducted before an AHCCCS hearing officer designated by the Director and held in accordance with A.R.S. §§ 41-1061 and 41-1062.
2. After the conclusion of the hearing, the AHCCCS hearing officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.

E. Decision of the Director.

1. After receipt of the Hearing Officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law, and, unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. The Director shall notify any party adversely affected of the right to request rehearing or review.
2. Except as provided in subsection (F), the Director's decision, made pursuant to this subsection, shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq. and subsection (F). Such a decision is not subject to judicial review unless the Director makes the finding provided for in subsection (F).

F. Request for rehearing or review.

1. Unless the Director determines in the decision that good cause exists otherwise, a party dissatisfied with the decision may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the grievant's rights:
 - a. Irregularity in the proceedings of the hearing or appeal whereby the dissatisfied party was deprived of a fair hearing or appeal;
 - b. Misconduct of a party or the agency;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.

- ~~H. Failure to comply with the provisions of this Section shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.~~

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL REVIEWS AND CERTIFICATION

PREAMBLE

1. Sections Affected

Article 2
R18-5-201
R18-5-202
R18-5-203
R18-5-204
R18-5-205
R18-5-206
R18-5-207
R18-5-208
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R18-5-232
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R18-5-236
R18-5-237
R18-5-238

Rulemaking Action

[illegible]

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R18-5-239	New Section
R18-5-240	New Section
R18-5-241	New Section
R18-5-242	New Section
R18-5-243	New Section
R18-5-244	New Section
R18-5-245	New Section
R18-5-246	New Section
R18-5-247	New Section
R18-5-248	New Section
R18-5-249	New Section
R18-5-250	New Section
R18-5-251	New Section
Appendix A	New Section
Appendix B	New Section
Appendix C	New Section

2. **The specific authority for the rulemaking including, both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 49-104(B)(12)

Implementing statute: A.R.S. § 49-142

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mr. Steve Pawlowski
Date: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona
Telephone: (602) 207-2227

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rules regulate the design and construction of public and semipublic swimming pools and spas. The rules prescribe the minimum design criteria for public and semipublic swimming pools and spas and the administrative procedures for obtaining Approvals to Construct and Approvals of Construction. The proposed design criteria are consistent with American National Standards for public swimming pools and spas that are recommended by the National Spa and Pool Institute. The design criteria also are consistent with currently effective county swimming pool ordinances in Maricopa County and Pima County. The proposed rules provide for ADEQ construction inspections, and they authorize the issuance of a cease-and-desist order to close a public or semipublic swimming pool which has not been constructed in compliance with the prescribed minimum design criteria. Finally, the proposed rules include special-use pool and variance provisions which provide additional regulatory flexibility and which will make it possible for the Arizona Department of Environmental Quality [ADEQ] to conduct engineering reviews of new and innovative swimming pool and spa designs.

The proposed rules implement a statutory mandate at A.R.S. § 49-104(B)(12) which states that ADEQ, through its Director, shall:

Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities which do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to A.R.S. § 36-136(H)(11).

A.R.S. § 49-104(B)(12) was enacted into law in 1987 [See Laws 1987, Ch. 317, § 14]. The law amended the general powers and duties of the Director of Department of Health Services [ADHS] at A.R.S. § 36-136(H)(14) by removing the authority of the Director of the ADHS to prescribe minimum standards for the design of swimming pools and transferring that authority to the Director of ADEQ. Prior to 1986, ADEQ was a part of ADHS. ADEQ was established as a separate state agency with the passage of the Environmental Quality Act of 1986. It is believed that the authority to conduct design reviews of public and semipublic swimming pools and bathing places was transferred to ADEQ because, after the creation of ADEQ as a separate state agency, ADEQ had the engineers on staff who could review the design plans and specifications for public and semipublic swimming pools and spas.

ADHS retains jurisdiction to regulate certain aspects of the operation and maintenance of public and semipublic swimming pools and bathing places. Under A.R.S. § 36-136(H)(11), the Director of ADHS is required to:

Prescribe reasonably necessary measures to prevent pollution of water in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at such places. The rules shall prescribe minimum standards for sanitary conditions which shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of such premises and abatement as public nuisances of any premises and facilities which do not comply with minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and

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shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to A.R.S. § 49-104(B)(12).

ADHS promulgated the current swimming pool rules that are found in Title 9 of the Arizona Administrative Code [See A.A.C. R9-8-801 through R9-8-852]. The current Title 9 rules prescribe minimum design standards and minimum standards for maintaining sanitary conditions for public and semipublic swimming pools and spas. ADEQ uses these ADHS rules to conduct design reviews of public and semipublic swimming pools and spas. The current ADHS rules in Title 9 do not have any historical notes to indicate when they were adopted or last revised. However, ADEQ has determined from its own legal research that the current Title 9 rules have not been updated since at least the late 1970s. The current Title 9 rules are virtually identical to ADHS rules that can be found in the 80-3 supplement to the Arizona Compilation of Administrative Rules and Regulations [now the Arizona Administrative Code].

When ADEQ was established as a separate state agency, the Arizona Legislature provided for a transition of duties and responsibilities from ADHS (ADEQ's predecessor state agency) to ADEQ. The Legislature provided in ADEQ's enabling legislation that *from and after June 30, 1987, the Department of Environmental Quality succeeds to the authority, powers, duties, and responsibilities of the Division of Environmental Health of the Department of Health Services* [See Laws 1986, Ch. 368, §146]. This transition provision also provided that *administrative rules adopted by the division continue in effect until superseded by administrative action by the Department of Environmental Quality*. The proposed rules are intended to supersede the Sections of the ADHS rules in Title 9 of the Arizona Administrative Code that are related to the design review of public and semipublic swimming pools and spas. If the proposed rules become effective, ADHS will have to amend the Title 9 swimming pool rules to repeal any Sections that are related to design review which are superseded by this rulemaking.

The proposed rules apply only to the design and construction of *public and semipublic* swimming pools and spas. A "public swimming pool" or a "public spa" is defined as a swimming pool or spa that is open to members of the general public regardless of whether a fee is charged for admission [See R18-5-201]. The terms include a swimming pool or spa that is operated by a county, municipality, school district, university, or a political subdivision. It also includes any commercial swimming pool or spa where the primary business of the facility is the operation of a swimming pool or spa and which is open to the members of the public. A "semipublic swimming pool" or "semipublic spa" means a swimming pool or spa that is operated in conjunction with a lodging such as a hotel, motel, resort, apartment or townhouse complex, condominium complex, trailer court, or a mobile home or recreational vehicle park. The term also includes a swimming pool or spa that is operated in conjunction with a country club, health club, camp, and similar establishments. Finally, "semipublic swimming pool" or "semipublic spa" includes a swimming pool or spa that is operated by a neighborhood or homeowner's association for the residents of a community and their guests but which is not open to members of the public. The proposed rules do not apply to swimming pools and spas at private residences [including swimming pools and spas at duplexes or triplexes]. The proposed rules do not apply to natural or semiartificial bathing places such as lakes, ponds, beaches, or hot springs. Finally, the proposed rules do not apply to swimming pools and spas that are used for medical or physical therapy which are supervised by licensed medical personnel [See A.A.C. R18-5-202].

Under the proposed rules, any person who wants to construct a new public or semipublic swimming pool or spa, or who wants to modify an existing public or semipublic swimming pool or spa, must obtain written approval from ADEQ. The proposed rules require the submittal of an application for an Approval to Construct and the submittal of complete design plans and specifications for the swimming pool or spa. ADEQ engineers review the design plans and specifications to determine whether the planned construction complies with the minimum design criteria that are prescribed in the rules. If the design plans and specifications comply with the rules, then ADEQ issues an Approval to Construct authorizing the construction project [See A.A.C. R18-5-203]. The actual construction of a public or semipublic swimming pool or spa must conform to ADEQ-approved plans and specifications. An additional approval from ADEQ is required should it be necessary to make changes to the ADEQ-approved plans and specifications during construction. No public or semipublic swimming pool or spa may operate without receiving a final Approval of Construction from ADEQ. The proposed rules provide for an ADEQ inspection of the construction or 3rd-party certification of the public or semipublic swimming pool or spa to ensure that it has been constructed in accordance with ADEQ-approved plans and specifications [See A.A.C. R18-5-204].

The proposed rules include a special-use pool provision at R18-5-248. A special-use swimming pool is one that is designed specifically for competitive aquatic events, aquatic exercise, lap swimming, or specialized aquatic instruction [for example, scuba training]. The term, "special-use pool" also includes specialized swimming pools that are part of a water recreation park [for example, wave action pools, exit pools for water slides, and watercourses]. Special-use swimming pools may have unique design requirements which cannot be addressed adequately in rules which apply generally to public and semipublic swimming pools. The proposed rule is intended to provide regulatory flexibility and allow the Department to use best professional judgment when evaluating the design of special-use pools.

The proposed rules also include a variance provision at R18-5-251. Like the special-use provision, this proposed rule is intended to provide additional regulatory flexibility and permit the use of alternative designs, materials, or equipment that are equivalent to those required by the rules. The Department recognizes that new swimming pool and spa technologies are constantly being developed. There needs to be a procedural mechanism in the swimming pool and spa rules which will permit the use of alternative designs, materials, or equipment which are demonstrated to be equivalent to those that are required by the rules and which will not result in an unreasonable risk to persons who will be using the swimming pool and spa. The variance provision establishes this procedural mechanism. It provides for agency discretion to convene an advisory committee of representatives of swimming pool or spa owners, building contractors, professional engineers, and public health officials to consider variance requests and make recommendations to the Department on whether a variance request should be granted or denied.

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5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

The following classes or groups of persons will be affected by the proposed rules, to the extent that they are owners of public or semipublic swimming pools or spas, swimming pool or spa contractors, or providers of services or materials and equipment used in the design, construction, operation, and maintenance of swimming pools and spas:

1. Hotel and motel owners;
2. Owners of commercial water parks and wave pools;
3. Homeowners associations and owners of apartment complexes, trailer courts, country clubs, health clubs, camps, or similar establishments with swimming pools or spas;
4. Counties that have agreements with ADEQ that have been delegated the authority to approve the design and construction of public and semipublic swimming pools and spas within their jurisdiction.
5. Municipalities and school districts which operate public swimming pools or spas;
6. Engineering and architectural firms;
7. Swimming pool and spa contractors who are licensed to practice in Arizona;
8. Manufacturers and distributors of equipment and supplies for swimming pool and spas.

- A. The probable costs and benefits to the Arizona Department of Environmental Quality and any other state agency; anticipated effects on state revenues.

The ADEQ Technical Engineering Unit, which is part of the Water Quality Division, is responsible for the review and approval of the plans for the design and construction of public and semipublic swimming pools and spas. The Technical Engineering Unit conducts approximately 30-60 design reviews of public and semipublic swimming pools and spas each year. The adoption of the proposed rules by ADEQ will not result in any incremental costs to ADEQ because the regulatory infrastructure for design review of public and semipublic swimming pools and spas is already in place. ADEQ anticipates no increases in staff or budget to implement the proposed rules.

The Department of Health Services (ADHS) Food Protection and Institutional Sanitation Section is responsible for the inspection of the sanitary conditions at public and semipublic swimming pools and spas. The adoption of the proposed rules by ADEQ will have no effect on ADHS. ADHS will continue to inspect sanitary conditions at public and semipublic swimming pools and spas pursuant to ADHS rules that are prescribed in Title 9 of the Arizona Administrative Code. It is anticipated that ADHS will need to initiate rulemaking to repeal currently effective ADHS rules that are related to design review of public and semipublic swimming pools and spas that are currently in Title 9.

The proposed rules will not create any revenues for the state because no fees are currently being assessed by ADEQ for the design review process and none are proposed.

- A. Counties

No changes to the regulatory process are anticipated for any political subdivision, except for counties that have entered into to delegation agreements with ADEQ to administer the public and semipublic swimming pool and spa rules. The only counties that have entered into such agreements are Maricopa County and Pima County. The delegated counties will be required to amend their local swimming pool ordinances to conform them to the proposed rules to the extent that county ordinances are less stringent than the proposed rules. In counties which do not have delegation agreements with ADEQ, ADEQ will implement and enforce the proposed rules directly.

At the present time, the Maricopa County Environmental Services Division [MCESD] reviews the design and oversees the construction of public and semipublic swimming pools and spas in Maricopa County. The Pima County Health Department administers the sanitary code which regulates public and semipublic swimming pools and spas in Pima County. It is not anticipated that Maricopa County or Pima County will need to amend their county ordinances because ADEQ is proposing minimum design criteria that are consistent with Pima and Maricopa County's currently effective ordinances.

Maricopa County and Pima County charge fees for design review of public and semipublic swimming pools and spas and for operating permits. In Maricopa County, the owner or the contractor (on behalf of the owner) who wants to build a public or semipublic swimming pool or spa is charged a fee which is based on the square footage of the swimming pool or spa:

500 sq.ft. or less	--	\$150
501 to 1000 sq.ft.	--	\$200
1001 to 2000 sq.ft.	--	\$680
2001 to 9999 sq.ft.	--	\$795
10,000 sq.ft. or more	--	\$1,055

Inspections are conducted by MCESD staff. If reinspections are required, a \$60 fee is charged for each reinspection. If a pump test is required, a fee of \$125 is charged. \$100 is charged for each variance request. An operating permit is issued by the

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Maricopa County Field Services Section after construction, which costs \$200 and is good for a 2-year period. MCESD is currently reviewing its fee schedule and is planning to introduce some changes. These costs are usually paid by the swimming pool or spa contractor during the permitting process and are passed on to the owner. In Pima County, fees for design reviews and final inspections of public and semipublic swimming pools are \$53. Pima County also charges an annual operating permit fee. Pima County's operating permit fees range from \$37 to \$65. These county fees will remain unchanged by ADEQ's proposed rules.

B. Municipalities, school districts, and universities

Municipalities, school districts, and universities that operate public swimming pools will be affected by these rules in the same way that other owners are affected. These entities provide swimming pools as an amenity for the use of residents within the municipality or students within the school district or at the university. Public pools, because of their relative size, bathhouse, and other requirements tend to be more expensive to build than the average semipublic swimming pool. According to private contractors, the average cost of a public pool ranges from \$150,000 to \$400,000. However, these are only average costs and the cost of individual public pools may be much higher. For example, the latest public pool built by the City of Mesa (Shepherd Pool) cost \$1.4 million. Frequently, municipalities construct public pools with new design features, such as wave pools, water slides, fountains, and artificial beaches. In general, the costs associated with the construction of public swimming pools are driven by market forces, not by government regulation. The adoption of the proposed minimum design standards will not increase the costs of public swimming pool construction.

C. Owners and operators of semipublic swimming pools

The owners of semipublic swimming pools will be affected by the proposed rules. These are owners of hotels, motels, apartment complexes, condominiums, country clubs, health clubs, and similar establishments who operate swimming pools for the use of their clientele and members. The average cost of a semipublic swimming pool ranges from \$25,000 to \$40,000. In general, semipublic swimming pools tend to be smaller in size than public pools. However, there is tremendous variation not only in the size but also in the design and construction of semipublic swimming pools.

The cost of construction of some semipublic swimming pools can be very high. At the upper end of the cost range (\$350,000 to more than \$1 million), the trend has been away from the basic rectangular swimming pool to the creation of recreational water parks. This usually means the building of swimming pools with embellished natural settings, waterfalls, artificial watercourses, water slides, fountains, children's spray pools, game pools, wave pools, and artificial beaches. Architectural and design features which were never imagined when the currently effective design criteria for semipublic swimming pools were adopted more than 30 years ago are becoming the norm rather than the exception. For example, the Pointe Hilton Resort at Squaw Peak in Phoenix features an 8-acre water park called the Hole-in-the-Wall River Ranch. This water park features a network of three swimming pools, a 1,000-foot river canal, a waterfall cascading over artificial boulders, and a 130-foot water slide. The cost to construct the Hole-in-the-Wall River Ranch was approximately \$3 million. Another example may be found at the Arizona Biltmore Hotel which recently refurbished its swimming pool complex by constructing a soundproofed, 95-foot water slide and a 20-foot waterfall. The most expensive of the semipublic swimming pools built to date is reputed to be that of the Phoenician Hotel. Its swimming pool cost approximately \$5 million. Nothing in the proposed rules will significantly alter the cost of building these facilities. The differences between the proposed and currently effective design and construction specifications are minor and will not materially affect overall costs, which are essentially market-driven.

The currently effective ADHS rules have restricted the construction of water parks and swimming pools with new design features in the outlying counties of Arizona. The delegated counties, Maricopa County and Pima County, have been able to approve nonconforming swimming pools by relying on variance and special-use pool provisions in their county ordinances. The currently effective ADHS swimming pool rules do not provide this kind of regulatory flexibility. The proposed rules will create additional regulatory flexibility by including variance and special pool provisions. These provisions will allow owners to build public and semipublic swimming pools and spas that are more in keeping with market changes and customer demands without compromising health and safety standards.

D. Architects, professional engineers, and swimming pool and spa contractors

The other class of persons who will be affected by the proposed rules will be the architects, engineers, and swimming pool and spa contractors who do business in Arizona outside of Maricopa County and Pima County. They will have more flexibility to design and build swimming pools and spas more in keeping with their customer's demands.

According to the Arizona State Registrar of Contractors, there are 58 licensed commercial swimming pool contractors currently doing business in Arizona. A licensed contractor can work anywhere in Arizona. Because the proposed rules will standardize design and construction requirements statewide, a positive impact may be felt by licensed contractors who work outside of Maricopa County and Pima County. They will now be able to conform to a single set of design standards.

This same positive note was stated by the Executive Director of the Arizona Chapter of the National Spa and Pool Institute, a trade association based in Phoenix. This trade association is composed of builders, contractors, service companies, and manufacturers and distributors of swimming pool supplies and equipment. The Institute has about 30 builder-members statewide, 20 of whom are based in Maricopa County. A fairly large number of the remaining builders are in Pima County and there is 1 each in Yuma, Prescott, Prescott Valley, and Bullhead City. Association members in Maricopa County probably will not feel any immediate impact, but if the restrictions imposed by the current rules are removed, more building of pools outside of Maricopa County could occur as the Arizona economy outside of the Phoenix and Tucson metropolitan areas improves. This will eventually affect service companies and manufacturers and distributors of pool supplies and equipment (pumps, motors,

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filtration systems, chemicals, cleaning systems, plumbing equipment, etc.). There are 3 major supply companies in the state and 2 out-of-state companies which supply about 80% of all the pools in Maricopa County. Their business is anticipated to increase, but to what precise extent cannot be calculated.

These impacts will be felt by contractors and other business owners, whether they conform to the statutory definition of small business or not. There will be no differential impact of these rules on small business owners with 100 or fewer employees, or with less than \$4 million in annual revenue. Neither will the proposed rules require any special reporting or compliance procedures that will affect small business owners differently.

E. Consumers

Consumers who will be affected by these rules are the users of public and semipublic pools and spas. They will be affected only indirectly, because the use of swimming pools and spas constitutes an optional amenity which customers of hotels, motels, multi-family residential complexes, or residents of a municipality or school district may or may not take advantage of. However, it is generally recognized that swimming pools and spas are popular amenities. Since access to a semipublic swimming pool is normally built into the price of a hotel room or apartment rent, there are no additional costs which consumers have to bear. In the case of water parks and other water recreation facilities, the price of admission is what consumers have to pay. These costs are independent of the proposed rules. The proposed rules should not result in any increase in the costs of construction of a public or semipublic swimming pool or spa. Thus, consumers should not see any additional costs passed through to them in the form of increased lodging costs, rents, or prices of admission.

F. Taxpayers

Public swimming pools are built and financed by municipalities and school districts in a variety of ways, usually by combining appropriations from the general fund with the issuance of bonds. Costs are passed on to taxpayers in the form of city sales taxes (City of Phoenix) and utility rates (City of Mesa). User fees are typically charged at public swimming pools but these fees do not fully recover costs. For example, user fees cover only about 1/3 of the costs for operation and maintenance of public swimming pools in the City of Mesa and only 19% of the costs in the City of Phoenix. The taxpaying public ultimately pays for all of the costs to construct public swimming pools and most of the operation and maintenance costs. The proposed rules will not change the way that public pools are financed and paid for, nor will they increase construction, operation, or maintenance costs. Taxpayers should not see any additional costs passed through to them in the form of increased taxes, utility rates, or user fees.

G. Benefits

The benefits that will result from the proposed rules can be summarized as follows:

1. The introduction of flexibility into the state regulatory process will enable public and semipublic pool owners outside of Maricopa County to build facilities with innovative design features in accordance with customer demand. This will also enable them to take advantage of new technologies available in the market and to increase their competitiveness. Direct economic benefits could thus be realized by the owners of public and semipublic swimming pools and spas.
2. Users of public and semipublic swimming pools and spas may have a greater variety of facilities to choose from, increasing the recreational value and potential community (social) benefits they derive from the use of these facilities. Swimming, especially competitive swimming programs that are part of public pool operations, have also been known to increase health and fitness benefits among participants.
3. City administrators refer to the indirect economic benefits derived from public pools in the community. These facilities are used to draw families and businesses looking to relocate to their area. These amenities are often cited as features of a community that enhance the quality of life.
4. City recreation administrators also regard public pools as an amenity that is made available to young people of a local jurisdiction which has high community value. This is because recreation programs are one way of keeping some young people off the streets and possibly reducing the propensity for criminal activity.

H. Impact on small business

The primary impact of the proposed rules will be to the owners of public and semipublic swimming pools and spas and persons engaged in the business of designing and building swimming pools and spas. As previously stated, the economic impact of the proposed rules will be minimal for all businesses, including small businesses. The proposed rules are essentially an incorporation of nationally recommended design standards or design standards which already govern the design and construction of public and semipublic swimming pools and spas in Maricopa County and Pima County. There will be no differential impact of these rules on business owners, regardless of the size of their employees or annual revenues. Since the economic impact of the proposed rules is expected to be minimal or nonexistent, there is no need to include special provisions to reduce impacts further for small businesses. There is no need for less stringent compliance or reporting requirements, compliance schedules, or deadlines for small businesses.

To the extent that the proposed rules will encourage the building of more public and semipublic swimming pools and spas outside of Maricopa County, small businesses may benefit directly and indirectly. Furthermore, companies doing business in Arizona that will benefit directly are overwhelmingly "small" if we consider that these are business establishments with fewer than 100 employees. Data from the Bureau of the Census publication County Business Patterns, 1991 for Arizona indicate that between 90 and 99% of businesses that would be affected are classified as small businesses. These include, but are not

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limited to, the following: hotel and motel operators (719); sporting and recreational camps (37); manufacturers of swimming pool equipment, plastics, filter systems, lighting fixtures, and other sporting and athletic goods (494); and general and specialized building contractors (6,690).

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ms. Mila Hill
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Phone: (602) 207-2264
Fax: (602) 207-2251

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:

Date: June 3, 1997
Time: 1:30 p.m.
Location: Public Meeting Room
Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona

Date: June 4, 1997
Time: 1:30 p.m.
Location: Corporation Commission Hearing Room 222
Arizona State Office Complex
400 West Congress
Tucson, Arizona

Date: June 10, 1997
Time: 1:30 p.m.
Location: County Board of Supervisors Meeting Room
809 East Beale Street
Kingman, Arizona

Written comments on the proposed rules may be submitted to the Department. Written comments must be received by the close of business or postmarked on June 20, 1997. Address written comments to Steven Pawlowski at the address listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable

10. Incorporations by reference and their location in the rules:

- a. National Sanitation Foundation Standard Number 50, "Circulation System Components for Swimming Pools, Spas, or Hot Tubs," (amended as of September 1, 1994) in R18-5-206(C), R18-5-207(J), R18-5-209(D), and R18-5-216(E).
- b. "Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Bathtub Appliances," ANSI A112.19.8 M-1987 in R18-5-208(F).
- c. National Sanitation Foundation Standard No. 14, "Plastic Piping Components and Related Materials," in RR18-5-225(I).

11. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATIONS**

**ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING
POOLS AND SPAS**

Section

R18-5-201. Definitions
R18-5-202. Applicability
R18-5-203. Approval to Construct
R18-5-204. Approval of Construction
R18-5-205. Prohibitions

R18-5-206. Water Source
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R18-5-221.	Diving Areas and Equipment
R18-5-222.	Prohibition Against Diving; Warning Signs
R18-5-223.	Water Circulation System
R18-5-224.	Piping and Fittings
R18-5-225.	Pumps and Motors
R18-5-226.	Drains and Suction Outlets
R18-5-227.	Filters
R18-5-228.	Return Inlets
R18-5-229.	Gauges
R18-5-230.	Flow Meter
R18-5-231.	Strainers
R18-5-232.	Overflow Collection Systems
R18-5-233.	Vacuum Cleaning Systems
R18-5-234.	Disinfection
R18-5-235.	Cross-connection Control
R18-5-236.	Wastewater Disposal
R18-5-237.	Lifeguard Chairs
R18-5-238.	Lifesaving and Safety Equipment
R18-5-239.	Rope and Float Lines
R18-5-240.	Barriers
R18-5-241.	Public Swimming Pools; Bathhouses and Dressing Rooms
R18-5-242.	Semipublic Swimming Pools; Toilets and Lavatories
R18-5-243.	Drinking Water Fountains
R18-5-244.	Wading Pools
R18-5-245.	Electrical Requirements
R18-5-246.	Air Blower and Air Induction Systems for Public and Semipublic Spas
R18-5-247.	Water Temperature in Public and Semipublic Spas
R18-5-248.	Special-use Pools
R18-5-249.	Inspections
R18-5-250.	Enforcement
R18-5-251.	Variances
Appendix A	Diving Boards, Public and Semipublic Pools
Appendix B	Average Width of All Swimming Pools
Appendix C	Minimum Distance Requirements

**ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING
POOLS AND SPAS**

R18-5-201. Definitions

The terms of this Article shall have the following meanings:

1. "Accessible" means easily approached and exposed for inspection or maintenance.
2. "Air induction system" means a system whereby a volume of air is induced into a hollow ducting in a spa floor, bench, or wall. An air induction system is activated by an air power blower and is separate from the water circulation system.
3. "Artificial lake" means a manmade lake, lagoon, or basin, lined or unlined, with a surface area equal to or greater than 2 acres (87,120 square feet), that is used or intended to be used for water contact recreation.
4. "Backwash" means the process of thoroughly cleansing the filter medium or elements by the reverse flow of water through the filter.
5. "Barrier" means a fence, wall, building, or landscaping which obstructs access to a public or semipublic swimming pool or spa.
6. "Cartridge filter" means a depth, pleated, or surface-type filter component with fixed dimensions that is designed

to remove suspended particles from water flowing through the filter.

7. "Construct" means to build or install a new public or semipublic swimming pool or spa or to enlarge, deepen, or make a major modification to an existing public or semipublic swimming pool or spa.
8. "Coping" means the cap on a swimming pool or spa wall that provides a finished edge around the swimming pool or spa.
9. "Cross connection" means any physical connection or structural arrangement between a potable water distribution system and any other source or system through which it is possible to introduce into any part of the potable water system any used water, industrial fluid, gas, or substance other than the intended potable water with which the potable water system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or change-over devices, and other temporary or permanent devices through which or because of which backflow can occur are considered to be cross connections.
10. "Deck" means those areas immediately adjacent to or attached to a swimming pool or spa that are specifically constructed or installed for sitting, standing, or walking.
11. "Deep area" means any portion of a public or semipublic swimming pool that is more than 5 feet in depth.
12. "Discharge piping" means that portion of the circulation system piping which carries water from the filter back to the swimming pool or spa.
13. "Diving area" means the area of a public or semipublic swimming pool that is designated for diving from a diving board, diving platform, or a starting block.
14. "Diving board" means a recreational mechanism for entering a swimming pool, consisting of a semirigid board that derives its elasticity through the use of a fulcrum mounted below the board.
15. "Fill-and-draw swimming pool or spa" means a swimming pool or spa where the principal means of cleaning is the complete removal of the used water and its replacement with potable water.
16. "Filtration rate" means the rate of water flowing through a filter during the filter cycle expressed in gallons per minute per square foot of effective filter area.
17. "Floor" means the interior bottom surface of a swimming pool or spa.
18. "Flow-through swimming pool or spa" means a swimming pool or spa where water enters the swimming pool or spa and an equal quantity of used water constantly flows out of the swimming pool or spa.
19. "Freeboard" means that section of the swimming pool or spa wall measured vertically between the waterline and the walkway or deck surface.
20. "Hose bibb" means a faucet with a threaded nozzle that bends downward to which a hose may be attached.
21. "Hydrotherapy jet" means a fitting which blends air and water and creates a high-velocity, turbulent stream of air-enriched water for injection into a spa. A hydrotherapy jet system is activated by a booster pump system which is completely independent of the water circulation system for a spa.
22. "Ladder" means a series of vertically separated treads or rungs connected by vertical rail members or independently fastened to a vertical swimming pool or spa wall.
23. "Make-up water" means fresh water that is used to fill or refill a swimming pool or spa.

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24. "Natural bathing place" means an outdoor lake, pond, river, stream, swimming hole, or hot springs which has not been improved or modified by man.
25. "Operate" means to run, maintain, or otherwise control or direct the functioning of a public or semipublic swimming pool or spa.
26. "Overflow collection system" means the equipment and devices for the removal of water, including gutters and other rim-type overflows, surface skimmers, and collection systems of various designs and manufacture.
27. "Potable water" means drinking water.
28. "Private residential spa" means a spa at a private residence, the use of which is limited to members of the family or invited guests of the owner of the residence, or a spa which serves a housing group consisting of no more than 3 living units [for example, duplexes and triplexes].
29. "Private residential swimming pool" means a swimming pool at a private residence, the use of which is limited to members of the family or invited guests of the owner of the residence, or a swimming pool which serves a housing group consisting of no more than 3 living units [for example, duplexes and triplexes].
30. "Public spa" means a spa, admission to which may be gained by members of the public with or without the payment of a fee, including any spa that is operated by a county, municipality, political subdivision, school district, university, college, and any commercial establishment that is open to members of the public where the primary business of the establishment is the operation of a spa.
31. "Public swimming pool" means a swimming pool, admission to which may be gained by members of the public with or without the payment of a fee, including any swimming pool that is operated by a county, municipality, political subdivision, school district, university, college, and any commercial establishment that is open to members of the public where the primary business of the establishment is the operation of a swimming pool.
32. "Recessed treads" means a series of vertically spaced, preformed stepholes in a swimming pool wall.
33. "Return inlet" means the aperture or fitting through which water returns into a swimming pool or spa which is on the discharge side of the pump.
34. "Rope and float line" means a continuous line not less than 3/4" in diameter which is supported by buoys and is attached to opposite sides of a swimming pool to separate areas of the swimming pool.
35. "Semiartificial bathing place" means a natural bathing place that has been modified or improved by man.
36. "Semipublic spa" means a spa that is operated solely for and in conjunction with lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments, including any spa that is operated by a neighborhood or community association which is open to residents of the community and their guests but which is not open to members of the public and any spa at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a spa and where the use of the spa is included in the fee or consideration paid or given for the primary use of the premises.
37. "Semipublic swimming pool" means a swimming pool that is operated solely for and in conjunction with lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments, including any swimming pool that is operated by a neighborhood or community association which is open to residents of the community and their guests but which is not open to members of the public and any swimming pool at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a swimming pool and where the use of the swimming pool is included in the fee or consideration paid or given for the primary use of the premises.
38. "Shallow area" means any portion of a public or semipublic swimming pool that is 5 feet or less in depth.
39. "Slip-resistant" means a surface which has a static coefficient of friction [wet or dry] of at least 0.50.
40. "Spa" means an artificial basin, chamber, or tank of irregular or geometric shell design which is intended to be used for bathing or soaking only and which is not drained, cleaned, or refilled for each individual user. A spa may include features such as hydrotherapy jet circulation, hot water, cold water mineral baths, or an air induction system. Industry terminology for a spa includes, but is not limited to, "hydrotherapy pool," "whirlpool," "hot tub," and "therapy pool."
41. "Special-use pool" means an artificial basin, chamber, or tank that is intended to be used for competitive aquatic events, an aquatic exercise pool, a lap pool, a wave action pool, an exit pool for a water slide, any swimming pool that is part of an attraction at a water recreation park, a water volleyball pool, or a swimming pool with special features used for scuba training and instruction.
42. "Steps" means a riser/tread or series of risers/treads extending down from the deck and terminating at the floor of the swimming pool or spa.
43. "Suction outlet" means the aperture or fitting through which water is withdrawn from a swimming pool or spa on the suction side of the pump.
44. "Suction piping" means that portion of the circulation system piping which carries water from a swimming pool or spa to the filter.
45. "Swimming pool" means an artificial basin, chamber, or tank which is constructed and used or intended to be used for swimming or diving.
46. "Turnover rate" means the period of time in hours required to circulate a volume of water equal to the capacity of the swimming pool or spa.
47. "User" means any person using a swimming pool or spa or adjoining deck area.
48. "Wading pool" means an artificial basin, chamber, or tank which is intended to be used by small children for bathing or wading.
49. "Water circulation system" means an arrangement of mechanical equipment or components, connected by piping to a swimming pool or spa in a closed loop, to direct water from the swimming pool or spa and cause it to flow through the water circulation system components for the purpose of filtering, disinfecting, and returning the water back to the swimming pool or spa.
50. "Water circulation system components" means the mechanical components which are a part of the water circulation system of a swimming pool or spa. Water circulation system components include, but are not limited to, pumps, filters, valves, surface skimmers, ion generators, electrolytic chlorine generators, ozone process equipment, and chemical feeding equipment.
51. "Water level" is defined as one of the following:

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- a. On swimming pools with skimmer systems, the water level means the midpoint of the operating range of the skimmers.
- b. On swimming pools with overflow gutters, the water level means the height of the overflow rim of the gutter.

R18-5-202. Applicability

- A. The rules in this Article apply to public and semipublic swimming pools and spas.
- B. The rules in this Article do not apply to the following:
 - 1. A private residential swimming pool or spa;
 - 2. A swimming pool or spa that is used for medical treatment or physical therapy which is supervised by licensed medical personnel;
 - 3. A semi-artificial bathing place;
 - 4. A natural bathing place; or
 - 5. An artificial lake.

R18-5-203. Approval to Construct

- A. The following persons are required to obtain an Approval to Construct before any construction of a public or semipublic swimming pool or spa is undertaken:
 - 1. Any person who wants to construct a new public or semipublic swimming pool or spa;
 - 2. Any person who wants to modify an existing public or semipublic swimming pool or spa in a way which requires a change to Department-approved plans and specifications;
 - 3. The owner of a semipublic swimming pool who wishes to change its use to a public swimming pool; and
 - 4. The owner of a private residential swimming pool who wishes to change its use to a public or semipublic swimming pool.
- B. The application for an Approval to Construct shall be submitted to the Department in quadruplicate on forms furnished by the Department. The application shall be accompanied by 4 complete sets of plans and specifications for the swimming pool or spa.
- C. An application for an Approval to Construct shall include the following documents:
 - 1. A general plot plan;
 - 2. Plans and specifications showing the size, shape, cross-section, and dimensions of each swimming pool or spa, adjacent deck areas, and barriers;
 - 3. Plans and specifications showing the water circulation and disinfection systems, including all piping, drains, suction outlets, filters, pumps, surface skimmers, return inlets, chemical feeders, disinfection equipment, gauges, flow meters, and strainers;
 - 4. Plans and specifications showing the source of water supply and the method of disposal of filter backwash water and used swimming pool or spa water when the swimming pool or spa is drained;
 - 5. Detailed plans of bathhouses, dressing rooms, equipment rooms, and other appurtenances, including the method of disposal for wastewater;
 - 6. Additional data as may be required by the Department for a complete understanding of the project.
- D. All plans and specifications submitted to the Department for review shall be prepared by, or under the supervision of, a professional engineer or architect who is currently registered in Arizona or a swimming pool or spa contractor with an A-9 or A-19 license who is licensed to practice in Arizona.
- E. An application for an Approval to Construct shall be submitted to the Department at least 60 days prior to the date that the

applicant wishes to begin construction of the swimming pool or spa.

- E. The Department shall determine whether the application for an Approval to Construct is complete within 30 days of the date of submittal of the application. The Department shall issue a written notice to the applicant that the application for an Approval to Construct is complete or a letter which identifies specific information deficiencies in the application form, design plans, or specifications. If the Department issues a deficiency letter within 30 days of the date of the submittal of the application for an Approval to Construct, then the time frame for making a determination of administrative completeness is suspended until the Department receives the information identified in the deficiency letter.
- G. The Department shall issue or deny the application for an Approval to Construct within 30 days of the date that the Department determines that the application for an Approval to Construct is complete. The Department shall issue an Approval to Construct if the proposed swimming pool or spa complies with the rules prescribed in this Article. The Department may issue an Approval to Construct with conditions. The Department may make 1 written request for additional information during the 30-day time frame for substantive review of the complete application for an Approval to Construct. If the Department makes a written request for additional information during the substantive review time frame, then the 30-day time frame for making a final determination on the application is suspended from the date the written request is issued until the date that the Department receives the additional information from the applicant. The Department and the applicant may mutually agree in writing to allow supplemental requests for additional information during the substantive review time frame.
- H. If construction is not started within 1 year after the date of the issuance of the Approval to Construct, or if there is a halt in construction of more than 1 year, then an Approval to Construct is void, unless an extension of time is granted in writing by the Department.

R18-5-204. Approval of Construction

- A. A public or semipublic swimming pool or spa shall not operate without receiving an Approval of Construction issued by the Department.
- B. The construction of a public or semipublic swimming pool or spa shall conform to plans and specifications that have been approved by the Department. If it is necessary or desirable to make any change in the approved plans and specifications, then the applicant shall submit revised plans and specifications with a written statement of the reasons for the change to the Department. Department approval of the revised plans and specifications shall be obtained before the work affected by the change is undertaken.
- C. The owner of a public or semipublic swimming pool or spa shall notify the Department prior to any construction which will cover the piping arrangement of the swimming pool or spa and at least 30 days prior to the expected date of completion of construction of a public or semipublic swimming pool or spa to permit an inspection. An inspector from the Department may conduct an inspection to determine whether the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions. In lieu of a construction inspection by the Department, a professional engineer, architect, or sanitarian who is currently registered in Arizona may certify that the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions.

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- D. The Department shall issue an Approval of Construction within 30 days of the date of the construction inspection or the date of receipt of 3rd-party certification if the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions.

R18-5-205. Prohibitions

- A. A fill-and-draw swimming pool or spa shall not be used as a public or semipublic swimming pool or spa.
B. A private residential spa shall not be used as a public or semipublic spa.

R18-5-206. Water Source

Only water from a source that is approved by the Department shall be used in a public or semipublic swimming pool or spa. Reclaimed wastewater shall not be used as make-up water for a public or semipublic swimming pool or spa.

R18-5-207. Materials of Construction

- A. A public or semipublic swimming pool or spa shall be constructed of concrete or other structurally rigid material which is equivalent in strength or durability to concrete, except that a public or semipublic spa may be constructed of fiberglass or acrylic.
B. A public or semipublic swimming pool or spa shall be constructed of materials which are nontoxic.
C. A public or semipublic swimming pool or spa shall be constructed of waterproof materials which provide a watertight structure.
D. A public or semipublic swimming pool or spa shall have a smooth and easily cleaned surface, without cracks and joints [excluding structural joints], or to which a smooth, easily cleaned surface finish is applied or attached.
E. All corners in a public or semipublic swimming pool or spa shall be rounded, including the corners formed by the intersection of walls and floor.
F. The surfaces within a public or semipublic swimming pool or spa that are intended to provide footing for users shall be designed to provide a slip-resistant surface. The roughness or irregularity of such surfaces shall not cause injury or discomfort to users' feet during normal use.
G. The colors, patterns, or finishes of the interior of a public or semipublic swimming pool or spa shall not obscure the existence or presence of objects or surfaces within the swimming pool or spa or the presence of debris, sediment, or algae. Surface finishes shall be either white, pastel, or other light color. The interior finish shall completely line the swimming pool or spa to the coping, tile, or the gutter system.

R18-5-208. Maximum Bathing Load

- A. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:
1. A minimum of 10 square feet of swimming pool surface area per user shall be provided in the shallow area.
 2. A minimum of 24 square feet of swimming pool surface area per user in the deep area [not including the diving area].
 3. A minimum of 300 square feet of swimming pool surface area shall be provided for each diving board. This reserved area shall not be included in determining the swimming pool surface area per user in the deep area.
- B. In lieu of the maximum bathing load prescribed in R18-5-208(A), the maximum bathing load for a public swimming pool may be limited by the number of toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms.

- C. The maximum bathing load for a public or semipublic spa shall be calculated so that a minimum of 9 square feet of surface area are provided for each user.
D. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

R18-5-209. Shape

- A. No limits are specified for the shape of a public or semipublic swimming pool or spa except that consideration shall be given to shape during the design of a public or semipublic swimming pool or spa to minimize hazards to users and to provide adequate circulation of swimming pool or spa water.
B. There shall be no protrusions, extensions, means of entanglement, or other obstructions in a public or semipublic swimming pool or spa which can cause the entrapment or injury of the user. This subsection shall not be construed to prohibit water features such as water fountains, slides, water play equipment, or water volleyball and basketball nets.
C. The average width of a public or semipublic swimming pool shall not be less than 14 feet. The average width shall be calculated by dividing the surface area of the swimming pool by its maximum length [See Appendix B]. Circular pools that are a minimum of 14 feet in diameter may be approved by the Department.

R18-5-210. Walls

- A. Walls shall not be greater than 11° from plumb for a minimum depth of 3 feet from the waterline in the deep area or 2 feet from the waterline in the shallow area of a public or semipublic swimming pool. In a public swimming pool where a racing lane terminates, the wall shall be plumb to a minimum depth of 5 feet below the waterline. Below these depths, the wall may be radiused to join the floor.
B. No projections from a swimming pool or spa wall are allowed except for coping, cantilevered deck, ladders, and steps.
C. Underwater seats, when provided, shall comply with the following:
1. The edges of an underwater seat shall be outlined with a sharply contrasting colored tile or other material which is clearly visible from the deck adjacent to the underwater bench.
 2. An underwater seat shall have a slip-resistant surface.
 3. An underwater seat in a public or semipublic swimming pool shall be completely recessed into the swimming pool wall.
 4. The maximum depth of an underwater seat is 24 inches below the waterline. The minimum depth of an underwater seat is 12 inches below the waterline.
 5. The maximum width of an underwater seat is 20 inches.
- D. Where a spa is located immediately adjacent to a swimming pool, the separating wall between the spa and the swimming pool shall be no more than 8 inches in width. The top of the separating wall shall be no lower than the level of the coping of the swimming pool. If a separating wall is more than 8 inches in width, then the minimum required deck width prescribed in R18-5-217(D) shall be maintained. A spa shall not be located immediately adjacent to the deep area of a swimming pool.
E. Coping or cantilevered deck may project from a swimming pool or spa wall to provide a handhold for users. Where provided, the coping or deck must be rounded, have a slip-resistant surface finish, and shall not exceed 3½ inches in thickness. The overhang of the coping or deck shall not exceed 2 inches nor be less than 1 inch. All corners created by coping or cantilevered deck shall be rounded in both the vertical and horizontal dimensions to eliminate sharp corners.

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R18-5-211. Freeboard

- A. The freeboard in a public or semipublic swimming pool or spa shall not exceed 8 inches, except as provided in subsection (B).
- B. The freeboard in a semipublic swimming pool may be increased to provide walls, terraces, or other design features provided all of following requirements are met:
1. Guard rails or other similar devices are provided to prevent any raised area from being used as a diving platform.
 2. The vertical surfaces of raised areas are constructed of inorganic materials. All vertical surfaces shall be rigid, smooth, and easily cleanable.
 3. The horizontal surface areas comply with the provisions for decks.
 4. The vertical surface area is included as surface area of the pool for determining the type, size, location, and numbers of equipment and piping.
 5. The length and height of the section where freeboard may be increased is limited. The Department shall review each request to allow an increase in freeboard on a case-by-case basis. In reviewing the request, the Department shall consider safety, exit distances, alternative exits, and location.

R18-5-212. Floors

- A. The slope of the floor of a public swimming pool, from the end wall in the shallow area towards the deep area to the point of the first slope change, shall be uniform and shall not exceed 1 foot of fall in 12 feet. The slope of the floor of a semipublic swimming pool, from the end wall in the shallow area towards the deep area to the point of the first slope change, shall be uniform and shall not exceed 1 foot of fall in 10 feet. The slope of the floor in a public or semipublic spa shall not exceed 1 foot of fall in 10 feet.
- B. The slope of the floor of a public or semipublic swimming pool, from the point of the first slope change to the deep part of the swimming pool, shall be uniform and shall not exceed 1 foot of fall in 2 feet in a swimming pool that is equipped for diving. The slope of the floor from the point of the first slope change to the deepest part of the swimming pool shall be uniform and shall not exceed 1 foot of fall in 3 feet in a public or semipublic swimming pool that is not equipped for diving.
- C. For a public or semipublic swimming pool that is equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 5 feet. For a public or semipublic swimming pool that is not equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 4 feet.
- D. All portions of a swimming pool or spa floor shall slope towards a main drain.
- E. The transitional radius where the floor of a public or semipublic swimming pool joins a wall shall comply with the following:
1. The radius shall have its center no less than 3 feet below the waterline in the deep area or 2 feet below the waterline in the shallow area.
 2. The radius shall be tangent at the point where the radius either meets the wall or floor.
 3. The radius shall be at least equal to, or greater than, the depth of the swimming pool minus the vertical wall depth measured from the waterline minus 3 inches.

R18-5-213. Entries and Exits

- A. Each public or semipublic swimming pool shall have at least 2 means of entry or exit. These shall consist of ladders, steps, or recessed treads and may be used in combination.

- B. There shall be at least 1 ladder, set of steps, or set of recessed treads for each 75 feet of perimeter of a public or semipublic swimming pool or spa.
- C. At least 1 means of entry and exit shall be provided in the deep area and at least 1 means of entry and exit shall be provided in the shallow area of a public or semipublic swimming pool. Where the water depth is 2 feet at the swimming pool wall in the shallow area or where there is a 0-depth entry pool (for example, an artificial beach), such areas shall be considered as providing a means of entry or exit.
- D. A set of steps shall be provided in a public or semipublic spa.
- E. Stairs, ladders, and recessed treads shall be located so as not to interfere with racing lanes.

R18-5-214. Steps

- A. Each set of steps shall be provided with at least 1 handrail to serve all treads and risers. Handrails shall be provided at 1 side or in the center of all steps. Handrails shall be installed in such a way that they can be removed only with tools.
- B. Steps shall be permanently marked so as to be clearly visible from above and below the water level in a swimming pool or spa. The edges of steps shall be outlined with a sharply contrasting colored tile or other material which is clearly visible from the deck adjacent to the steps.
- C. Steps may be constructed only in the shallow area of a public or semipublic swimming pool.
- D. Steps shall not project into a public or semipublic swimming pool or spa in a manner which creates a hazard to users.
- E. All tread surfaces on steps shall have slip-resistant surfaces.
- F. Step treads shall have a minimum unobstructed horizontal depth of 10 inches. Risers shall have a maximum uniform height of 12 inches, with the bottom riser height allowed to vary $\pm 2"$ from the uniform riser height.

R18-5-215. Ladders

- A. At least 1 ladder shall be provided in the deep area of a public or semipublic swimming pool. Where the deep area of a public or semipublic swimming pool is greater than 20 feet in width, 2 ladders, located on opposite sides of the deep area, are required.
- B. A swimming pool or spa ladder shall be equipped with 2 handrails.
- C. All treads on ladders shall have slip-resistant surfaces.
- D. Ladder treads shall have a minimum horizontal depth of 1½". There shall be a uniform height between ladder treads with a 7-inch minimum distance and a 12-inch maximum distance.
- E. Below the waterline, there shall be a clearance of not more than 6 inches and not less than 3 inches between any ladder tread edge and the wall (as measured from the side of the tread closest to the wall).

R18-5-216. Recessed Treads

- A. Recessed treads and handrails may be substituted for ladders.
- B. Recessed treads shall be pre-formed, readily cleanable, and designed to drain into the swimming pool or spa to prevent the accumulation of dirt in the recessed treads.
- C. Each set of recessed treads shall be equipped with 2 handrails.
- D. All recessed treads shall have slip-resistant surfaces.
- E. The vertical distance between the swimming pool or spa coping edge or deck and the uppermost recessed tread shall be a maximum of 12 inches. Recessed treads at the centerline shall have a uniform vertical spacing of 12 inches maximum and 7 inches minimum.
- F. Recessed treads shall have a minimum depth of 5 inches and a minimum width of 12 inches.

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R18-5-217. Decks and Deck Equipment

- A. Decks, ramps, coping, and similar step surfaces shall be constructed of concrete or other inorganic material, have a slip-resistant finish, and be easily cleanable.
- B. The minimum continuous, unobstructed deck width, including the coping, shall be 10 feet for a public swimming pool and 4 feet for a semipublic swimming pool. The dimensional design of decks at public and semipublic swimming pools shall comply with the dimensions shown in Appendix C.
- C. A minimum 5 feet of deck width shall be provided on the sides and rear of any diving equipment at a public swimming pool. A minimum of 4 feet of deck width shall be provided on the sides and rear of any diving equipment at a semipublic swimming pool. Where diving equipment is installed at a public swimming pool, there shall be a minimum of 15 feet of deck width from the swimming pool wall to the edge of the deck behind the diving equipment.
- D. A continuous unobstructed deck width of at least 4 feet, which may include the coping, shall be provided on at least 2 contiguous sides and around at least 50% of the perimeter of a public or semipublic spa.
- E. Decks shall be sloped to effectively drain either to perimeter areas or to deck drains. Drainage shall remove splash water, deck cleaning water, and rain water without leaving standing water. The minimum slope of the deck shall be 1/4 inch per 1 foot. The maximum slope of the deck shall be 1 inch per 1 foot, except for ramps.
- F. Decks shall be edged or otherwise relieved to eliminate sharp corners.
- G. Site drainage shall be provided so as to direct all perimeter deck drainage as well as general site and roof drainage away from a public or semipublic swimming pool or spa. Yard drains may be required to prevent the accumulation or puddling of water in the general area of the deck and related improvements.
- H. Hose bibbs shall be provided along the perimeter of the deck so that all parts of the deck may be reached with a 50-foot hose. At a minimum, each hose bibb shall be protected against back siphonage with an atmospheric vacuum breaker. Quick-disconnect-style hose bibbs may be approved by the Department.
- I. Any valve that is installed in or under any deck shall provide a minimum 10-inch diameter access cover and a valve pit to facilitate the repair and maintenance of the valve.
- J. Joints in decks shall be provided to minimize the potential for cracks due to changes in elevations or movement of the slab. The maximum voids between adjoining concrete slabs or between concrete slabs and expansion joint material, shall be 3/16" of horizontal clearance with a maximum difference in vertical elevation of 1/4". Areas where the deck joins concrete work shall be protected by expansion joints to protect the swimming pool or spa from the pressures of relative movements. Construction joints where pool or spa coping meets the deck shall be watertight and shall not allow water to pass through to the underlying ground.

R18-5-218. Lighting

- A. A public or semipublic swimming pool or spa and adjacent deck areas shall be lighted by natural or artificial means when the swimming pool or spa is in use.
- B. A public or semipublic swimming pool or spa that is intended to be used at night shall be equipped with artificial lighting that is designed and spaced so that all parts of the swimming pool or spa, including the bottom, may be seen without glare.
- C. If underwater lighting is provided, it shall comply with the requirements of the National Electric Code.

R18-5-219. Water Depths

- A. Except as provided in subsection (B) of this Section, the minimum water depth in the shallowest area of a public or semipublic swimming pool shall be 2 feet. The maximum water depth in the shallowest area of a public or semipublic swimming pool shall be 3 feet. In public swimming pools, where racing lanes terminate, the minimum depth shall be 5 feet from the water level to the point where the vertical wall is radiused to join the floor.
- B. The Department may approve a depth of less than 2 feet in a wading pool or to allow a 0-depth entry swimming pool.
- C. The maximum water depth in a public or semipublic spa shall be 42 inches, as measured from the water level.

R18-5-220. Depth Markers

- A. Water depths shall be conspicuously and permanently marked at or above the water level on the vertical wall of a public or semipublic swimming pool and shall be marked on the top of the coping or the edge of the deck next to the swimming pool.
 - 1. Depth markers on a vertical wall shall be positioned to be read from the water side.
 - 2. Depth markers on the deck shall be located within 18 inches of the side of the swimming pool and positioned to be read while standing on the deck facing the water. Depth markers that are located on the deck shall be made of slip-resistant materials.
- B. Depth markers for a public or semipublic swimming pool shall be installed at points of maximum and minimum water depth and at all points of slope change. Depth markers are required in the shallow area at 1-foot depth intervals to a depth of 5 feet. Thereafter, depth markers shall be installed at 2-foot depth intervals. Depth markers shall not be spaced at distances greater than 25 feet.
- C. Depth markers shall be located on both sides and at both ends of a public or semipublic swimming pool.
- D. Depth markers shall be in numerals with a 4-inch minimum height. Numerals shall be of contrasting color to the background on which they are applied.
- E. In public swimming pools with racing lanes, approach warning markers shall be placed below the water level on the opposite walls at the ends of each racing lane. Warning markers shall be of uniform color and size on a background of contrasting uniform color. Warning markers shall be clearly visible in or out of the water from a minimum distance of 10 feet.
- F. The shallow area of a public swimming pool shall be visually set apart from the deep area of the pool by a rope and float line.
- G. Depth markers for a public or semipublic spa shall comply with all of the following:
 - 1. A public or semipublic spa shall have permanent depth markers with numbers that are a minimum of 4 inches high. Depth markers shall be plainly and conspicuously visible from all obvious points of entry.
 - 2. The maximum depth of a public or semipublic spa shall be clearly indicated by depth markers.
 - 3. There shall be a minimum of 2 depth markers at each public or semipublic spa, regardless of spa size or shape.
 - 4. Depth markers shall be spaced at no more than 25 foot intervals and shall be uniformly located around the perimeter of the spa.
 - 5. Depth markers shall be positioned on the deck within 18 inches of the side of the spa. A depth marker shall be positioned so that it can be read by a person standing on the deck facing the water.
 - 6. Depth markers that are on deck surfaces shall be made of slip-resistant material.

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R18-5-221. Diving Areas and Equipment

- A. The dimensions for a diving area in a public or semipublic swimming pool shall comply with minimum requirements for length, width, depth, area, and other dimensions specified in Appendix A.
- B. Diving equipment shall be permanently anchored to the swimming pool deck. Equipment shall be rigidly constructed with sufficient bracing to insure stability. Supports, platforms, steps, and ladders for diving equipment shall be designed to carry anticipated loads.
- C. All diving stands higher than 21 inches, as measured from the deck to the top butt end of the board, shall be provided with stairs or a ladder.
- D. Diving equipment shall have a durable finish. The surface finish shall be free of tears, splinters, or cracks that may be a hazard to users.
- E. Steps and ladders leading to diving boards and diving platforms shall be of corrosion-resisting materials and shall have slip-resistant tread surfaces. Step treads shall be self-draining.
- F. Diving boards, diving platforms, and starting blocks shall have slip-resistant tread surfaces.
- G. Handrails shall be provided at all steps and ladders leading to diving boards that are 1 meter or more above the water.
- H. Diving boards and diving platforms that are 1 meter or higher shall be protected with guard rails. Guard rails shall be at least 30 inches above the diving board or diving platform and shall extend to the edge of the swimming pool wall.
- I. A label shall be permanently affixed to a diving board and shall include the following:
 - 1. Manufacturer's name and address.
 - 2. Board length, and
 - 3. Fulcrum setting instructions.
- J. The maximum diving board height over the water is 3 meters. The maximum height of a diving platform over the water is 10 meters.
- K. Starting blocks shall be located in the deep end of a public swimming pool or where the depth of the water is at least 5 feet.
- L. There shall be a completely unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This clear, unobstructed vertical space shall extend horizontally at least 8 feet behind, 8 feet to each side, and 16 feet ahead of Point A.
- M. Public and semipublic swimming pools that are intended for competitive diving, that have diving platforms, or that have diving boards that are higher than 1 meter over the surface of the water shall be designed and constructed so as to comply with the dimensional design requirements specified for diving by the Federation Internationale de Amateur [FINA], U.S. Swimming, U.S. Diving, National Collegiate Athletic Association [NCAA], National Federation of State High School Associations [NFSHA], or other official athletic sanctioning body.

R18-5-222. Prohibition Against Diving: Warning Signs

- A. Diving in a public or semipublic swimming pool that does not meet the minimum dimensions specified in Appendix A for diving board-equipped pools is prohibited. If a public or semipublic swimming pool does not meet the dimensional requirements prescribed in Appendix A for diving, then the owner shall prominently display at least 1 sign which cautions users that the swimming pool is not suitable for diving. The warning sign shall state "NO DIVING" in letters that are 4 inches or larger.
- B. Diving from the deck of a public or semipublic swimming pool into water that is less than 5 feet deep shall be prohibited. Warning markers stating "NO DIVING" in letters that are 4 inches or higher shall be placed on the deck within 18 inches

of the side of the swimming pool in the shallow area of the swimming pool. A "NO DIVING" warning marker shall be positioned so that it can be read by a person standing on the deck facing the water.

R18-5-223. Water Circulation System

- A. A water circulation system shall be provided for each public or semipublic swimming pool or spa to provide for complete circulation of water through all parts of the swimming pool or spa. The water circulation system shall be capable of maintaining water chemistry and water clarity requirements.
- B. The water circulation system for a public or semipublic swimming pool shall have a turnover rate of at least once every 8 hours or less. The water circulation system of a public or semipublic spa shall have a turnover rate of at least once every 30 minutes. The water circulation system for a wading pool shall have a turnover rate of at least once every hour. The water circulation system shall be designed to give the proper turnover rate without exceeding the maximum filtration rate for the filter that is prescribed in R18-4-227(E).
- C. Water circulation system components shall comply with National Sanitation Foundation Standard Number 50, "Circulation System Components for Swimming Pools, Spas, or Hot Tubs," [revised September 1, 1994 and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- D. Water circulation system components shall be accessible for inspection, repair, or replacement.
- E. Except as provided by this subsection, water that is withdrawn from a public or semipublic swimming pool or spa shall not be returned unless it has been filtered and adequately disinfected. Water may be withdrawn from a swimming pool for a water slide or a water fountain without being filtered or disinfected.
- F. The water circulation system in a public or semipublic swimming pool or spa shall be capable of operating continuously.
- G. Each swimming pool or spa shall be provided with its own water circulation system.
- H. Hydrotherapy jets or other devices which create roiling water or other similar effects in a spa shall not be connected to the water circulation system but must be operated through a separate system.

R18-5-224. Piping and Fittings

- A. The water velocity in discharge piping shall not exceed 10 feet per second, except for copper discharge piping where the velocity shall not exceed 8 feet per second. The water velocity in suction piping shall not exceed 6 feet per second. Piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head of the pump.
- B. Water circulation system piping and fittings shall be constructed of materials that are able to withstand 150% of normal operating pressures. Suction piping shall be of sufficient strength so that it does not collapse when there is a complete shutoff of flow on the suction side of the pump. Water circulation system piping shall undergo an induced static hydraulic pressure test at 25 pounds per square inch for at least 30 minutes. The pressure test shall be performed before the deck is poured and the pressure shall be maintained during the deck pour.
- C. Water circulation piping and fittings shall be made of non-toxic, corrosion-resistant materials.
- D. Water circulation piping and fittings shall be installed so that piping or fittings do not project into a public or semipublic swimming pool or spa in a manner which is hazardous to users.
- E. Piping that is subject to damage by freezing shall have a uniform slope in 1 direction and shall be equipped with valves

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which will permit the complete drainage of the water in the swimming pool or spa.

- E. Piping shall be designed to drain the swimming pool or spa water by removal of drain plugs, manipulating valves, or other means.
- G. Piping systems shall be identified by name tags or appropriate colors painted or located at conspicuous points.
- H. Plastic water circulation piping shall comply with National Sanitation Foundation Standard Number 14, "Plastic Piping Components and Related Materials," [revised November, 1990] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

R18-5-225. Pumps and Motors

- A. A pump and motor shall be provided for each water circulation system. The pump shall be sized to meet but not to exceed the flow rate required for filtering against the total head developed by the complete water circulation system. The pump shall be sized to comply with the turnover rate prescribed in R18-4-223(B).
- B. Pumps and motors shall be readily and easily accessible for inspection, maintenance, and repair. When the pump is below the waterline, valves shall be installed on permanently connected suction and discharge lines. The valves shall be readily and easily accessible for maintenance and removal of the pump.
- C. Each motor shall have an open, drip-proof enclosure which complies with National Electrical Manufacturer's Association Standard ANSI/NEMA-MG1. Each motor shall be constructed electrically and mechanically to perform satisfactorily and safely under the conditions of load and in the environment normally encountered in swimming pool or spa installations. Each motor shall be capable of operating the pump under full load with a voltage variation of $\pm 10\%$ from the nameplate rating. Each motor shall have thermal or current overload protection, either built-in or in the line starter, to provide locked rotor and running protection.
- D. The pump shall be equipped with an emergency shut-off switch that is located within the swimming pool enclosure to cut off power to the water circulation system if someone is entrapped on a main drain or suction outlet.

R18-5-226. Drains and Suction Outlets

- A. A public and semipublic swimming pool or spa shall be equipped with at least 2 main drains that are located in the deepest part of the swimming pool.
- B. Each main drain shall be covered by a grate which is not be readily removable by users. The openings in the grate shall have a total area that is at least 4 times the area of the drain pipe.
- C. The spacing of the main drains shall not be greater than 20 feet on centers nor more than 15 feet from each side wall.
- D. Suction outlets in a public or semipublic swimming pool or spa shall be provided with a cover that has been tested and approved by a nationally recognized testing laboratory and shall comply with "Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Appliances," ANSI A112.19.8 M-1987, which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- E. A minimum of 2 suction outlets shall be provided for each pump in the suction outlet system for a public or semipublic spa. The suction outlets shall be separated by a minimum of 3 feet or located on 2 different planes [that is, 1 suction outlet on the bottom and 1 on a vertical wall or 1 suction outlet each on 2 separate vertical walls]. The suction outlets shall be plumbed

such that water is drawn through them simultaneously through a common line to the pump.

- E. Suction outlets in a public or semipublic spa shall have plumbing provisions so as to relieve any possibility of entrapping suction. The total velocity through grate openings shall not exceed 2 feet per second. If the suction outlet system for a public or semipublic swimming pool or spa has a single suction outlet or if the suction outlet system has multiple suction outlets which can be isolated by valves, then each suction outlet shall protect against user entrapment by either an antivortex cover, a grate, or other means approved by the Department.

R18-5-227. Filters

- A. Filters shall be designed, located, and constructed to permit removal of filter manhole covers or heads for inspection and replacement or repair of filter elements or filter media. No filtration system shall be installed beneath the surface of the ground or within an enclosure without providing adequate access for inspection and maintenance.
- B. Pressure-type filters shall be equipped with a means to permit the release of internal pressure. Each pressure filter shall be equipped with an air relief piping system connected at an accessible point near the crown. Automatic air relief systems may be used in lieu of manual systems. Any filter incorporating an automatic air relief system as its principal means of air release shall have lids which provide a slow and safe release of pressure as a part of its design. Any separation tank used in conjunction with any filter tank shall have a manual means of air release or a lid which provides a slow and safe release of pressure as it is opened as part of its design.
- C. Pressure filter systems shall be equipped with a sight glass installed on the waste discharge pipe.
- D. Swimming pool and spa filters shall comply with National Sanitation Foundation Standard Number 50, "Circulation System Components for Swimming Pools, Spas, or Hot Tubs," [revised September 1, 1994 and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- E. The maximum filtration rate shall not exceed the design flow rate prescribed for the filter by the National Sanitation Foundation and in no case shall the maximum filtration rate exceed the following:
 - 1. The rate of filtration in a high-rate sand filter shall not exceed an equivalent of 20 gallons/minute/square foot.
 - 2. The rate of filtration of a diatomaceous earth filter shall not exceed 2 gallons/minute/square foot.
 - 3. The rate of filtration of a cartridge filter shall not exceed 0.375 gallons/minute/square foot.

R18-5-228. Return Inlets

- A. Adjustable return inlets shall be provided for each public and semipublic swimming pool or spa. Return inlets shall be designed, sized, and installed to produce a uniform circulation of water throughout the swimming pool or spa. Where surface skimmers are used, return inlets shall be located so as to help bring floating particles within range of the surface skimmers.
- B. A public or semipublic swimming pool shall have a minimum of 2 return inlets, regardless of the size of the swimming pool. The number of return inlets shall be based on 2 return inlets per 600 square feet of surface area, or fraction thereof.
- C. Return inlets in a public or semipublic swimming pool shall be on a closed-loop piping system. Public or semipublic spas with 3 or more return inlets shall be on a closed-loop piping system.
- D. Where the width of a public or semipublic swimming pool exceeds 30 feet, bottom returns shall be required. Bottom returns shall be flush with the pool bottom or designed to pre-

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vent injury to users. Bottom returns will be considered to have an area of influence described by a radius of 15 feet.

R18-5-229. Gauges

- A. Pressure gauges shall be installed on the water circulation system for each public and semipublic swimming pool and spa. Pressure gauges shall be installed in accessible locations where they are easily readable.
- B. Pressure gauges shall be installed on the inlet and outlet manifold of the filter. Pressure gauges shall read at intervals of 1 pound per square inch [psil].

R18-5-230. Flow Meter

A public swimming pool shall be equipped with a flow meter which indicates the rate of backwash through the filter. The flow meter shall be installed between the pump and the filter on a straight section of pipe as per the manufacturer's specifications in a location where it can be read easily. The flow meter shall measure the rate of flow through the filter in gallons per minute and shall be accurate to within 5% under all conditions of flow. The flow meter shall have an indicator with a range of at least 150% of the normal flow rate.

R18-5-231. Strainers

The water circulation system shall include a removable strainer located upstream of the pump to prevent solids, debris, hair, or lint from reaching the pump and filters. The strainer shall be made of corrosion-resistant material. A strainer shall have openings that have a total area which is equal to at least 4 times the area of the suction piping.

R18-5-232. Overflow Collection Systems

- A. An overflow collection system shall be installed in each public or semipublic swimming pool or spa.
- B. The overflow collection system shall be designed and constructed so that the water level of the swimming pool is maintained at the mid-point of the operating range of the system's rim or weir device.
- C. Rim-type overflow collection systems shall be installed on at least 2 opposite sides and have a total length of at least 50% of the perimeter of a public or semipublic swimming pool. The overflow collection system shall be capable of carrying 50% of the design capacity of the water circulation system.
- D. If overflow gutters are used, they shall be installed continuously around the swimming pool with the lip of the gutter level throughout its perimeter. Overflow gutters shall be provided with sufficient opening at the top and width at the bottom to permit easy cleaning. The overflow gutter bottom shall be pitched 1/4 inch per foot to drainage outlets located not more than 10 feet apart. Outlet piping shall be sized to circulate at least 50% of the capacity of the water circulation system and be properly covered by a drain grate. The surge tank for the overflow gutters shall be equipped with float controls which regulate the main drain, fill line, and overflow. The system surge capacity shall be not less than 1 gallon for each square foot of swimming pool surface area. Stainless steel gutters and other specialty gutter systems may be used if they are hydraulically equivalent to overflow gutters.
- E. Surface skimmers shall be recessed into the swimming pool or spa wall and shall be installed to achieve effective skimming action throughout the swimming pool or spa.
 - 1. One surface skimmer shall be provided for each 400 square feet, or fraction thereof, of surface area of a public or semipublic swimming pool. A minimum of 2 surface skimmers are required in a public or semipublic swimming pool. One surface skimmer shall be provided for each 200 square feet, or fraction thereof, of surface area of a public or semipublic spa.

- 2. The overflow slot shall be set level and shall not be less than 8 inches in width at the narrowest section.
- 3. The rate of flow through the skimmers shall be a minimum of 75% of the water circulation system capacity. Surface skimmers shall be designed to carry at least 30 gallons per minute per lineal foot of weir throat.
- 4. Where 3 or more surface skimmers are used, they must be on a closed-loop piping system.
- 5. At least 1 surface skimmer shall be located on the side or near the corner of the swimming pool that is downwind of the area's prevailing winds.
- 6. Main drain piping shall be designed to carry at least 50% of the design flow.

- G. Mixed inlet types [for example, surface skimmers and gutters] are prohibited in a public or semipublic swimming pool.

R18-5-233. Vacuum Cleaning Systems

A vacuum cleaning system shall be provided for each public and semipublic swimming pool. A vacuum cleaning system shall not create a hazard or interfere with the operation or use of the swimming pool. In integral systems, a sufficient number of vacuum cleaner fittings shall be located in accessible positions at least 10 inches below the water line. Alternatively, vacuum cleaner fittings may be installed as an attachment to the surface skimmers. A pressure cleaning system may be installed in addition to the required vacuum cleaning system.

R18-5-234. Disinfection

- A. An automatic chemical feeder that is adjustable shall be provided to ensure the continuous disinfection of the water in a public or semipublic swimming pool or spa. Timers on disinfection equipment are prohibited. Disinfection shall be accomplished by chlorination or by another method that is approved by the Department. The method of disinfection shall effectively maintain an adequate disinfectant residual in the water which is subject to field testing by methods that are easy to use and accurate.
 - 1. Chlorine disinfection equipment shall be designed to maintain a free chlorine residual of 1.0 to 3.0 ppm at a pH of 7.2 to 7.8.
 - 2. Bromine disinfection equipment shall be designed to maintain a bromine residual of 2.0 to 4.0 ppm.
 - 3. Chemical feeders for the addition of isocyanurates or chlorinated cyanurate shall be designed to maintain a level of 30-100 ppm.
- B. The use of isocyanurates or chlorinated cyanurate for disinfection and stabilization is permitted.
- C. Combined chlorine disinfection of water in a public and semipublic swimming pool or spa is prohibited.
- D. The addition of undissolved or gaseous disinfectant directly into a public or semipublic swimming pool is prohibited. Chlorine gas disinfection systems shall not be used for the disinfection of water in public or semipublic spas.
- E. A common chlorine gas disinfection system may be utilized in separate swimming pools if separate metering and feeding devices are provided for each swimming pool.
- F. When gaseous chlorine is used, the following shall be provided:
 - 1. The chlorinator, chlorine cylinders, and associated chlorination equipment shall be located in a separate well-ventilated enclosure at or above ground level. The enclosure shall be reasonably gas-tight, noncombustible, and corrosion-resistant. The door of the enclosure shall open to the outside and shall not open directly toward the swimming pool.
 - 2. If chlorination equipment is placed in a room, then an exhaust fan or gravity ventilation system shall be pro-

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vided. Mechanical exhausters shall take suction 6 inches or less above the floor and discharge through corrosion-resistant louvers to a safe outside location. A gravity ventilation system shall be designed and constructed to discharge to the outside from floor level. Fresh air intakes shall be located no closer than 3 feet above the ventilation discharge. In all cases, chlorine room exhausts shall be directed away from the swimming pool to an area which is normally unoccupied. Chlorine room fans shall be capable of completely changing the air in the room at least 1 time in a minute.

3. Electrical switches to control lighting and ventilation in the chlorine room shall be located on the outside of the enclosure and adjacent to the door.
4. Chlorine cylinders shall be kept in an upright position and securely anchored to prevent them from falling. Chlorine cylinders may be stored indoors or out. If stored outside, chlorine cylinders shall not be stored in direct sunlight. Keys shall be maintained on the chlorine cylinder so the supply can be shut off quickly in the case of an emergency. Chlorine cylinders shall not be stored near an elevator, ventilation system, or heat source. Full and empty chlorine cylinders shall be segregated and appropriately tagged.
5. A warning sign shall be placed on the outside of the door to the chlorine room which cautions persons of the danger of chlorine gas within the enclosure. The warning shall be in letters 3 inches high or larger. The door to the chlorine room shall be provided with a shatter resistant inspection window.
6. Chlorinators shall be a solution-feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Chlorinators shall be designed to prevent the backflow of water into the chlorine solution container.
7. Self-contained breathing apparatus [SCBA] which meets the requirements of the National Institute for Occupational Safety [NIOSH] shall be available where chlorine gas is handled and shall be stored in a convenient location, but not inside any room where chlorine is used or stored. A SCBA unit shall use compressed air, have at least a 30-minute capacity, and be compatible with SCBA units used by the local fire department.
8. A bottle of ammonium hydroxide, 56% ammonia solution, shall be available for chlorine leak detection. A leak repair kit that is approved by the Chlorine Institute shall be provided.
- G. Granular, tablet, stick, and other forms of dry disinfectant shall be fed by an adjustable automatic feeding device.
- H. Disinfection equipment and chemical feeders shall comply with the requirements set forth in National Sanitation Foundation Standard 50, "Circulation System Components for Swimming Pools, Spas, or Hot Tubs," [revised September 1, 1994 and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- I. If a chemical feeder is used, it shall be installed to inject solution downstream from the filter and the heater. An erosion-type feeder may be installed to feed solution to the suction side of the pump. A chemical feeder shall be wired so it cannot operate unless the filter pump is running.

R18-5-235. Cross-connection Control

- A. Cross connections between the distribution system of a public water system and the water circulation system of a public or semipublic swimming pool or spa are prohibited.

- B. Potable water for make-up water purposes may be introduced into a public or semipublic swimming pool or spa in any of the following ways:

1. Through an over-the-rim spout with an air-gap of at least twice the diameter of the pipe and not less than 6 inches above the overflow level. If an over-the-rim spout is used, it shall be located so that it does present a tripping hazard. The open end of an over-the-rim spout shall have no sharp edges and shall not protrude more than 2 inches beyond the edge of the swimming pool or spa wall;
2. Through a float controlled make-up water feed tank with an air gap of at least 3 inches above the overflow level; or
3. Through a submerged inlet which is protected against backsiphonage by at least a pressure vacuum breaker which is installed so that the bottom of the backflow prevention assembly is a minimum of 12 inches above the level of the coping.

R18-5-236. Disposal of Filter Backwash, Wasted Swimming Pool or Spa Water, and Wastewater

All sewage from plumbing fixtures, including urinals, toilets, lavatories, showers, drinking fountains, floor drains, and other sanitary facilities shall be disposed of in a sanitary manner. Filter backwash and wasted swimming pool or spa water may be discharged into a sanitary sewer through an approved air gap, an approved subsurface disposal system, or by other means that are approved by the Department provided the method of disposal complies with any applicable disposal requirements established by a county, municipal, or other local authority. There shall be no direct physical connection between the sewer system and any drain from a swimming pool or spa or the water circulation system.

R18-5-237. Lifeguard Chairs

Each public swimming pool shall have at least 1 elevated lifeguard chair for each 3,000 square feet of pool surface area or fraction thereof. At least 1 lifeguard chair shall be located close to the deep area of the swimming pool and shall provide a clear, unobstructed view of the swimming pool bottom. If a public swimming pool is provided with more than 1 lifeguard chair or the width of the public swimming pool is 45 feet or more, then lifeguard chairs shall be located on each side of the public swimming pool.

R18-5-238. Lifesaving and Safety Equipment

- A. Public and semipublic swimming pools shall have lifesaving and safety equipment that is conspicuously and conveniently located and maintained ready for immediate use at all times.
- B. Each public swimming pool shall have at least 2 ring buoys. Each semipublic swimming pool shall have at least 1 ring buoy. Fifty feet of 1/4 inch rope shall be attached to each ring buoy.
- C. Each semipublic and public swimming pool shall have at least 1 shepherd crook that is mounted on a rigid 16-foot pole.

R18-5-239. Rope and Float Lines

A rope and float line shall be installed across each public swimming pool on the shallow side of the break in grade between the shallow and deep portions of the pool [that is, within 1-2 feet of the point where the floor slope begins to exceed 1 foot in 10 feet]. The rope shall be a minimum of 3/4 inch in diameter and supported by floats spaced at intervals not greater than 7'. The rope and float line shall be securely fastened to wall anchors that are made of corrosion-resistant materials. The wall anchors shall be recessed or have no projection that constitutes a hazard when the float line is removed.

R18-5-240. Barriers

- A. A public swimming pool or spa and adjacent deck shall be entirely enclosed by a fence, wall, or barrier that is at least 6 feet high. A semipublic swimming pool or spa and adjacent

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deck shall be entirely enclosed by a fence, wall, or barrier that is at least 5 feet high. The height of the fence, wall, or barrier shall be measured on the side of the barrier which faces away from the swimming pool or spa.

B. Fences or walls shall:

1. Be constructed so as to afford no external handholds or footholds;
2. Be of materials which are impenetrable to small children;
3. Have no openings or spacings of such size that a spherical object 4 inches in diameter can pass through;
4. Be equipped with a gate which opens outward from the swimming pool or spa. The gate shall be equipped with a self-closing and self-latching closure mechanism or a locking closure located at or near the top of the gate, on the pool side of the gate, and at least 54 inches above the floor.

C. The distance between the horizontal components of a fence shall not be less than 45 inches apart. The horizontal members shall be located on the interior side of the fence. Spacing between vertical members shall not exceed 1-3/4 inches in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1-3/4 inches in width.

D. The maximum mesh size for a wire mesh or chain link fence shall be a 1-3/4 inches square.

E. Masonry or stone walls shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

E. Where a wall of a building serves as part of the barrier around a public or semipublic swimming pool or spa, there shall be no direct access to the swimming pool or spa through the wall except as follows:

1. Windows leading to the swimming pool or spa area shall be equipped with a screwed-in-place wire mesh screen or a keyed lock that prevents opening the window more than 4 inches;
2. A hinged door leading to the swimming pool or spa area shall be self-closing and shall have a self-latching device. The release mechanism of the self-latching device shall be located at least 54 inches above the floor.
3. If an additional set of doors is required by the fire code allowing access to the swimming pool or spa, they shall be equipped with panic bars no less than 54 inches from the floor to the bottom of the bar, designated "for emergency use only," and equipped with an alarm system.
4. Sliding doors leading to the swimming pool or spa area are prohibited except for sliding doors that are self-closing and self-latching.

G. Where a barrier is composed of a combination concrete masonry unit and wrought iron, the wrought-iron portion shall be installed flush with the outside vertical surface of the concrete masonry unit. The space between the wrought iron and the concrete masonry unit shall be 1/2 inch or less. The vertical members of the wrought iron shall be spaced 1-3/4 inch on center.

H. Filtration, disinfection, and water circulation equipment shall be enclosed by a wall or fence.

R18-5-241. Public Swimming Pools: Bathhouses and Dressing Rooms

- A. Separate dressing rooms shall be provided for each sex. Dressing rooms shall be equipped with baskets or other checking facilities adequate for the maximum number of people to be accommodated.**
- B. All entrances to and exits from the dressing rooms shall be effectively screened to interrupt the line of sight of persons outside the dressing rooms.**

C. Walls and partitions of dressing rooms, lockers rooms, toilets, and showers shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide a smooth and easily cleanable surface. Partitions shall be designed so that a waterway is provided between partitions and the floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

D. Floors shall be of nonslip construction, free of cracks or openings, and sloped to adequate drains so that the surface will be free of standing water and puddles. Floors shall be sloped not less than 1/4 inch per foot toward the drains to insure positive drainage. Carpeting is prohibited.

E. All furniture shall be of simple character and easily cleanable. Locker compartments, partitions, hoots, furniture, and other appurtenances in dressing rooms shall be so installed or raised above the floor to permit flushing down the dressing rooms and bathhouse interiors.

E. An adequate number of hose bibs shall be provided for flushing down the dressing room and the bathhouse interior.

G. Dressing rooms, toilets, and showers shall be provided with adequate lighting and ventilation.

H. Toilet facilities shall be provided for each sex. For male users, there shall be 1 toilet and 1 urinal for each 100 bathers or fraction thereof. For female users, there shall be 1 toilet for each 50 bathers, or fraction thereof. In no case shall less than 2 toilets be provided for female users. Sanitary napkin dispensers shall be installed in toilet or shower areas designated for female users.

I. Shower and handwashing facilities with hot and cold water and soap shall be provided for each dressing room. Hot and cold water shall be provided at all shower heads. The water heater and thermostatic mixing valve shall be inaccessible to users and shall be capable of providing 2 gallons per minute of 90°F water to each shower head. A minimum of 2 shower heads shall be provided in each dressing room. One shower head shall be provided in each dressing room for each 50 bathers or fraction thereof.

I. One lavatory with an unbreakable mirror shall be provided in each dressing room for the first 100 users. An additional lavatory and unbreakable mirror shall be provided for each additional 100 users or fraction thereof. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.

R18-5-242. Semipublic Swimming Pools: Toilets and Lavatories

A. A bathroom with a minimum of 1 toilet shall be provided for each sex.

B. One lavatory shall be provided in each bathroom. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.

C. An establishment which operates a semipublic swimming pool or spa which provides a private room with a toilet and lavatory for all bathers shall be deemed to have complied with the requirements of this Section.

R18-5-243. Drinking Water Fountains

Drinking water from an approved source and dispensed through 1 or more drinking fountains shall be located on the deck of each public swimming pool or spa.

R18-5-244. Wading Pools

- A. A wading pool is a type of public or semipublic swimming pool. The design criteria prescribed in this Article for public or**

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semipublic swimming pools apply, except as provided in this Section.

- B.** Wading pools shall be physically set apart from public and semipublic swimming pools.
1. A wading pool shall be separated from a public swimming pool by a minimum 4-foot high fence or partition with a self-closing, self-latching gate.
 2. A wading pool shall be separated from a semipublic swimming pool by at least 4 feet of deck.
 3. A wading pool shall not be located adjacent to the deep area of a public or semipublic swimming pool.
- C.** A wading pool shall have a maximum depth of 20 inches. Water depths may be reduced from the stated maximums and brought to 0 at the most shallow point of the wading pool.
- D.** The floor of a wading pool shall be uniform with a maximum slope of 1 foot of fall in 10 feet. The floor of a wading pool shall have a slip-resistant surface.
- E.** All wading pools shall have separate equipment for water circulation and disinfection. There shall be no cross-connection between the water circulation system of a wading pool and a public or semipublic swimming pool. The water in a wading pool shall have a maximum turnover cycle of 1 hour.
- F.** At least 2 main drains shall be provided at the deepest point in a wading pool. Each main drain shall be covered by a grate which cannot be removed by users. The openings in the grate shall have a total area that is at least 4 times the area of the drain pipe.
- G.** Surface skimmers shall be provided on the basis of at least 1 skimmer for each 200 square feet of wading pool surface area. Surface skimmer flow rates shall be the same as required for public and semipublic swimming pools. Where only 1 skimmer is provided, the main drain may be connected through the skimmer.
- H.** Return inlets shall be provided on a basis of at least 1 for each 10 feet of periphery of the wading pool. Where 3 or more return inlets are required, they shall be on a closed-loop piping system.
- I.** Suction outlets in a wading pool shall have plumbing provisions so as to relieve any possibility of entrapping suction. Suction outlets in a wading pool shall be provided with a cover that has been tested and approved by a nationally recognized testing laboratory and shall comply with "Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Appliances," ANSI A112.19.8 M- 1987, which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- J.** Gaseous chlorine shall not be used for the disinfection of wading pool water.
- K.** A drinking fountain at a height convenient to small children or a drinking fountain with a raised step shall be provided in the area of the wading pool.

R18-5-245. Electrical Requirements

- A.** A public or semipublic swimming pool or spa shall comply with the requirements of the National Electrical Code.
- B.** All grounding and bonding required in a public or semipublic spa shall comply with the requirements of UL 1563, "Standard for Electric Hot Tubs, Spas and Associated Equipment" (1987).
- C.** The timer for a public or semipublic spa which controls the hydrotherapy jets shall be located at least 5 feet from the spa and shall have a maximum time limit of 15 minutes.

R18-5-246. Air Blower and Air Induction Systems for Public and Semipublic Spas

An air blower system or air induction system for a public or semipublic spa shall comply with the following requirements:

1. The system shall prevent water backflow which could cause an electrical shock hazard;
2. Air intake sources shall not introduce water that is external to the spa unit, dirt, or contaminants into the spa;
3. The system shall be properly sized for a commercial spa application;
4. If the air blower is installed within an enclosure or indoors, then adequate ventilation shall be provided;
5. The system shall be installed in accordance with the requirements of the National Electrical Code;
6. Integral air passages shall be pressure tested and shall provide structural integrity to a value of 1-1/2 times the intended working pressure; and
7. Air blowers and air induction systems shall comply with the requirements of UL 1563, "Standard for Electric Hot Tubs, Spas, and Associated Equipment."

R18-5-247. Water Temperature in Public and Semipublic Spas

The temperature of heated water coming into a public or semipublic spa shall not exceed 104°F.

R18-5-248. Special-use Pools

- A.** A person who intends to construct a special-use pool shall notify the Department and provide plans, specifications, and a description of the intended use of the special-use pool. The Department shall use best professional judgment in approving a special-use pool, taking into consideration the intended use of the pool, the conditions under which it will operate, and the safety of users.
- B.** Swimming pools that are intended for competitive swimming and diving that are designed and constructed in accordance with design requirements prescribed by an official sanctioning athletic body such as the National Collegiate Athletic Association [NCAA], National Federation of State High School Associations [NFHS], U.S. Swimming, U.S. Diving or the Internationale de Natation Amateur [FINA], may be approved by the Department.
- C.** A special-use pool that is designed with exercise or training bars in the pool shall be restricted to the special use when the bars are located in the pool.
1. Bars shall be constructed of durable and corrosion-resistant material.
 2. Bars shall be sealed, welded shut, or capped at both ends to prevent retention of water within the bars.
 3. Bars may be removable. The bars then shall be wedge-anchored in place with a cover plate provided. Water-tight anchor plugs [95% efficiency] shall be provided when the bars are removed.
 4. Bars shall extend not more than 4 inches from the side of the pool into the water. The minimum clear opening from the inside of the bar to the side of the swimming pool shall not be less than 2 inches.
- D.** A special-use pool that is designed with a ramp shall comply with the following:
1. The ramp shall be constructed of slip-resistant material;
 2. The slope of the ramp shall not exceed 1 foot in 10 feet;
 3. The width of the ramp shall be at least 3 feet;
 4. The ramp shall have a level platform at the top and the bottom of the ramp;
 5. The ramp shall be equipped with at least a 3-1/2 foot high guardrail installed on the deck and extending the length of the ramp;
 6. The ramp shall be constructed with return inlets located on the pool and ramp walls along the length of the ramp.

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R18-5-249. Inspections

- A. An inspector from the Department, upon presentation of credentials, may enter into any public or semipublic swimming pool or spa to determine compliance with the rules prescribed in this Article. The inspector may inspect records, equipment, and facilities; take photographs; and take other action reasonably necessary to determine compliance with the rules prescribed in this Article.
- B. The owner or manager of a public or semipublic swimming pool or spa may accompany the inspector during any inspection.
- C. An inspector from the Department may inspect a public or semipublic swimming pool or spa without giving prior notice of the inspection to the owner or manager of the swimming pool or spa.

R18-5-250. Enforcement

- A. If an inspector finds a violation of any of the rules prescribed in this Article, the Department may issue a notice of violation to the owner of a public or semipublic swimming pool or spa. A notice of violation shall state, with specificity, the nature of the violation and shall allow a reasonable time for the violation to be corrected.
- B. If the Director has reasonable cause to believe that a person has constructed a public or semipublic swimming pool or spa in violation of the rules prescribed in this Article, the Director may order the closure of the swimming pool or spa by issuing a cease and desist order pursuant to A.R.S. § 49-142.

R18-5-251. Variances

- A. The Department may grant a variance from a requirement prescribed in this Article upon a demonstration by the owner of the public or semipublic swimming pool or spa that an alternative design, material, appurtenance, or technology is equivalent to a requirement prescribed in this Article. A variance that is granted on the ground that an alternative design, material, appurtenance, or technology is equivalent shall be conditioned upon the use of the approved alternative.
- B. The granting of a variance shall not result in an unreasonable risk to the health of persons who will use the swimming pool or spa.
- C. A request for a variance shall be in writing and shall contain the following information:
 - 1. Identification of the requirement prescribed in this Article for which a variance is requested;
 - 2. Explanation of the reasons why the owner cannot comply with the requirement for which a variance is requested;
 - 3. A complete description of the alternative design, material, or technology to be installed and used in the swimming pool or spa, including design plans, specifications, and a description of the cost;
 - 4. A demonstration that the alternative design, material, or technology to be installed and used in the swimming pool

or spa is equivalent to the requirement in this Article for which the variance is requested and will not result in an unreasonable risk to the persons who will use the swimming pool or spa:

- 5. A statement that the owner will perform reasonable requirements prescribed by the Department that are conditions of a variance.
- D. A request for a variance shall be submitted with an application for an Approval to Construct. The Department shall determine whether the application for an Approval to Construct and the variance request is complete. Within 30 days of the date of the submittal of the application for an Approval to Construct and the variance request, the Department shall issue a written notice to the applicant which states that the request for a variance and the application for an Approval to Construct is complete or which states that the request for a variance or the application for an Approval to Construct is incomplete and identifies specific information deficiencies in the application form, design plans, specifications, or the variance request.
- E. The Department may convene an advisory committee consisting of representatives of public and semipublic swimming pool and spa owners, public and semipublic swimming pool and spa building contractors, professional engineers, and county environmental and health departments to make a recommendation on any variance request.
- F. If the decision is to grant the request for a variance, then the Department shall identify the requirement for which the variance is granted, specify any conditions to the grant of a variance, and issue an Approval to Construct. If the Department decides to deny the request for a variance, then the Department shall issue a notice of intent to deny the request for a variance to the applicant. The notice shall state the reasons for the denial of the request for a variance and shall include a description of the applicant's right to request a hearing on the denial of the variance request pursuant to A.R.S. § 41-1092.03 and to request an informal settlement conference pursuant to A.R.S. § 41-1092.06. If the Department denies a request for a variance, then the Department may either deny the application for an Approval to Construct or issue an Approval to Construct which requires compliance with the requirement for which the variance is requested.
- G. In considering a request for a variance from a requirement prescribed in this Article, the Director shall consider the following factors:
 - 1. The intended use of the public or semipublic swimming pool or spa;
 - 2. The safety of the alternative design, material, or technology for which a variance is requested; and
 - 3. The cost and other economic considerations associated with requiring compliance with the requirement prescribed in this Article as compared to the alternative for which a variance is requested.

Appendix A Diving Boards, Public and Semipublic Pools

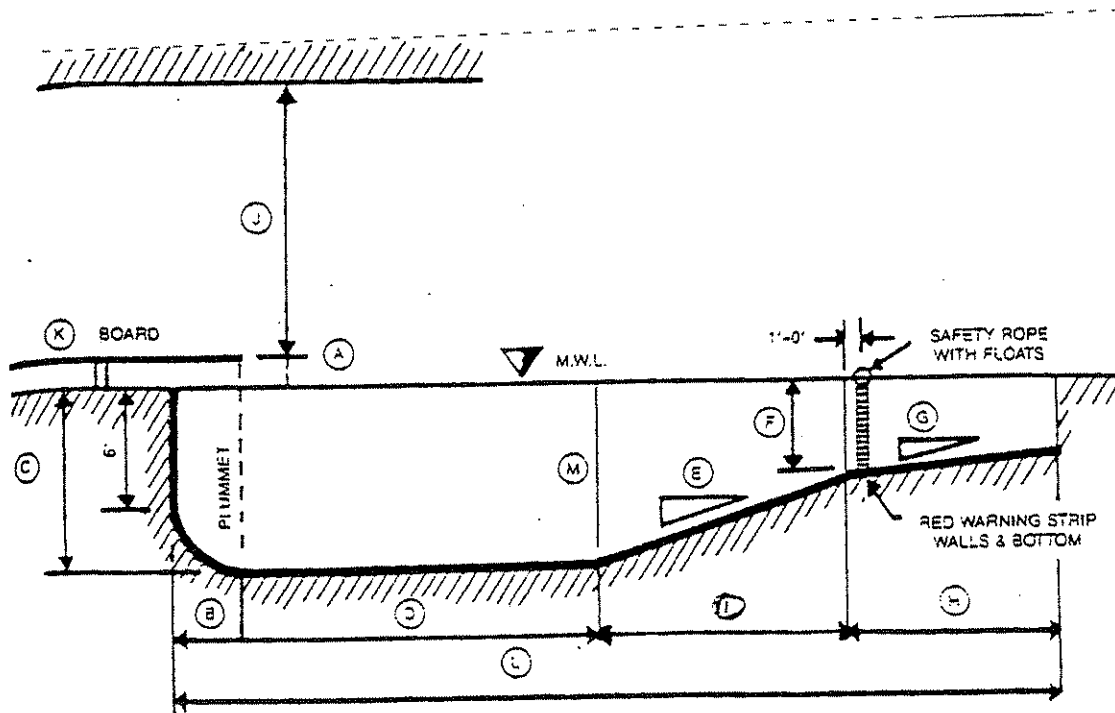


FIG : 1 : Profile for diving wells for all pools other than those designed to meet competitive diving rules (NCAA, USD, NFSHSAA, and FINA).

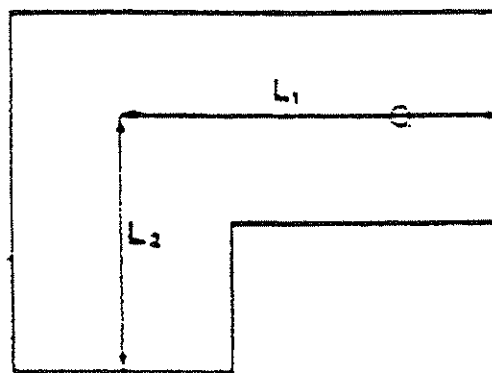
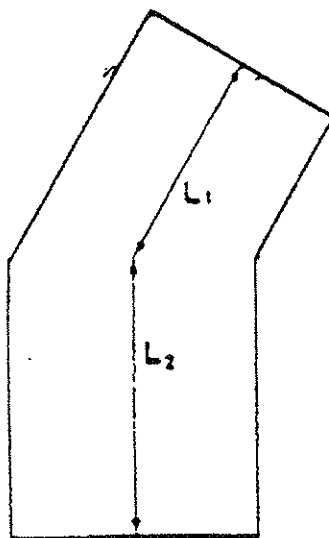
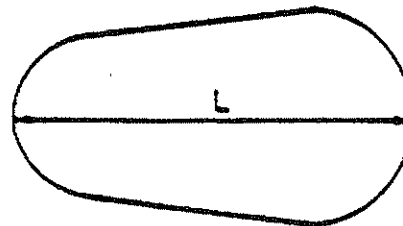
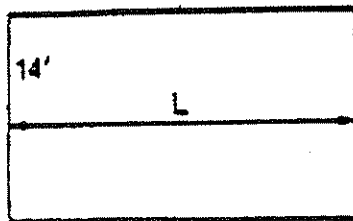
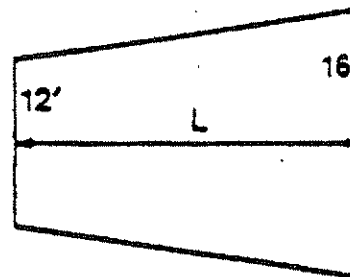
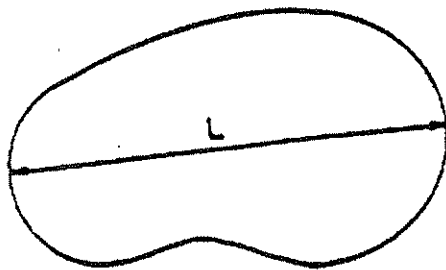
DIMENSION	MEASUREMENTS	
	Minimum	Preferred or Maximum
A. Height of board above water	18'	20'
B. Board overhang	2'	3'
C. Depth of water at plummet	9'	10'
D. Distance from plummet to start of upslope	16'	18'
E. Inclination of upslope of bottom	1 : 3	1 : 3
F. Depth of water at breakpoint	4'	4'
G. Slope of bottom in shallow portion of pool	1 : 10	1 : 15
H. Length of shallow portion of pool	8' 0"	14'
I. Length of upslope	13' 6"	15'
J. Distance to an overhead structure (indoor pools)	13' 0"	15'
K. Board length	6' 0"	10' maximum
L. Length of pool	40'	50'
M. Depth at start of transition (not less than C minus)	6'	0'

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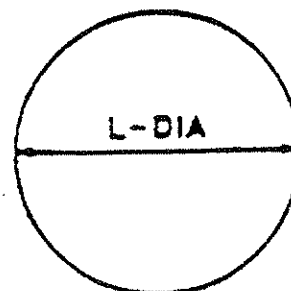
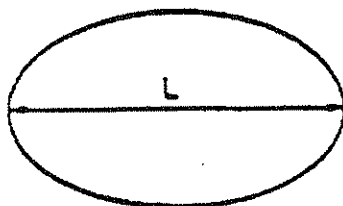
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Appendix B Average Width of All Swimming Pools

The average width shall not be less than 14 feet. Average width shall be the surface area of the pool divided by its length (L) typical of diagrams shown below.



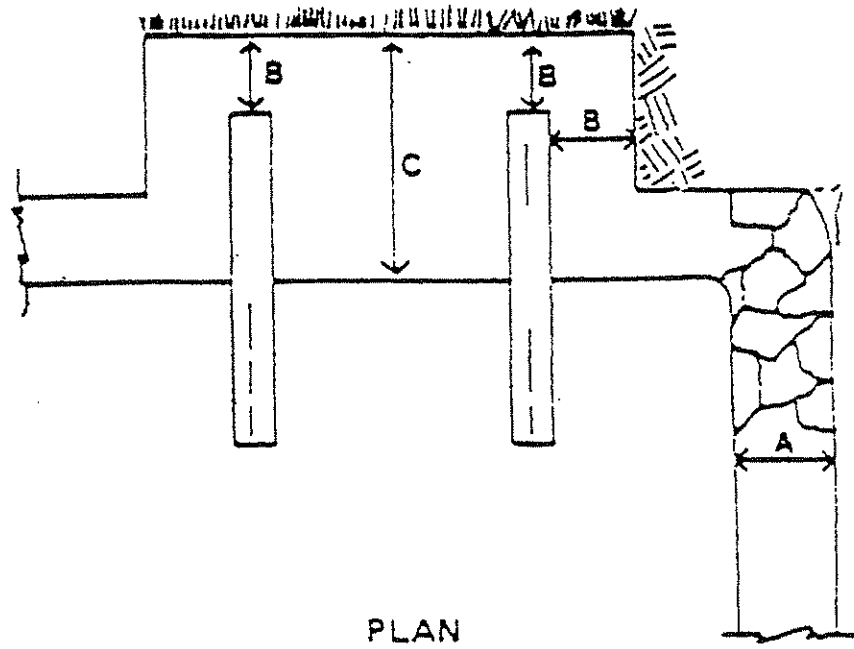
$$L_1 + L_2 = L$$



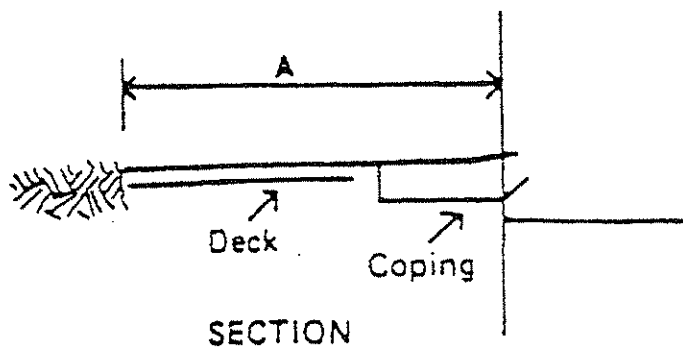
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Appendix C Minimum Distance Requirements

	Public	Semipublic
A	10	4
B	5	4
C	15	-



PLAN



SECTION